

IMO



INTERNATIONAL MARITIME LAW INSTITUTE

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**An Act to Incorporate the Safety of Offshore Oil and Gas Operations
and Amending Directive 2004/35/EC (Offshore Safety Directive,
Directive 2013/30/EU) and other Relevant Legislation relating to
Offshore Activities into the Laws of Malta, hereby Regulating the
Exploration and Exploitation of Hydrocarbons on the Continental
Shelf and repealing the Petroleum (Production) Act and the
Petroleum Production Regulations**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) in
International Maritime Law at the IMO International Maritime Law Institute**

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Academic Year 2014-2015

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International Conventions

The Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, adopted on the 25th June 1988 and entered into force on 30th October 2001.

Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, adopted on 14th October 1994 at Madrid, entered into force on 24th March 2011.

United Nations Convention on the Law of the Sea, adopted on 10th December 1982 and entered into force on 16th November 1994, 1833 UNTS 3; 21 ILM 1261 (1982).

Table of Legislation

Cypriot Legislation

Republic of Cyprus, Law No. 4 (I)/2007.

Republic of Cyprus, Law No. 51/2007.

EU Legislation

Directive 2013/30/EU of 12th June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC on environmental liability with regards to the prevention and remedying of environmental damage [2004] (Offshore Safety Directive) OJ L 178/66.

Maltese Legislation

Petroleum (Production) Act, Chapter 156 of the Laws of Malta.

Petroleum Production Regulations, S.L 156.01.

Continental Shelf Act, Chapter 194 of the Laws of Malta.

The Environment and Planning Act, Chapter 504 of the Laws of Malta.

Vessel Traffic Monitoring and Reporting Requirements Regulations, S.L 499.34 of the Laws of Malta.

List of Abbreviations

EEZ	Exclusive Economic Zone
EFZ	Exclusive Fisheries Zone
EMSA	European Maritime Security Agency
EU	European Union
EUROAG	European Union Offshore Oil and Gas Authorities Group
GDP	Gross Domestic Product
LBS	Land Based Sources
MEPA	Malta Environmental Planning Authority
NAO	National Audit Office
UNCLOS	United Nations Convention on the Law of the Sea

EXPLANATORY NOTE

1. OFFSHORE STRUCTURES IN THE MEDITERRANEAN AND THE EUROPEAN UNION

The Mediterranean Sea¹ brings together the continents of Europe, Africa and Asia. Approximately 3,800 km wide from west to east and a maximum length of 900 km north to south, the Mediterranean consists of a series of deep basins which are mostly connected to each other and covers a surface area of 2.5 million km².²

The instrumental economic advantages of the Mediterranean have been detailed in various publications and studies. In 2007, the Mediterranean provided a direct source of employment to 29.9 million persons in various sectors. 13.5% of this figure represents workers in the European Union (EU). In the same year, the GDP of EU regions bordering the Mediterranean coastline amounted to 13.9% of the total EU GDP. In 2009, 948.5 million tonnes of goods were handled by EU ports, whilst short sea shipping in 2008 totalled to 592.1 million tonnes in the Mediterranean. In 2009, around 212 million passengers embarked or disembarked at a Mediterranean port, accounting for 53% of the EU's seaborne passenger traffic.³

Although the majority of pollution in the Mediterranean Sea is attributed to vessels and land based sources (LBS), offshore platforms engaged in the exploitation of the continental shelf, the seabed and its subsoil are also responsible. Moreover, the effects of a significant accidental release of hydrocarbons from such installations give rise to apprehension, especially in light of international disasters such as the Deepwater Horizon incident in 2010.⁴

¹ Countries bordering the Mediterranean Sea in clockwise order: Spain, France, Italy, Malta, Slovenia, Croatia, Bosnia Herzegovina, Montenegro, Albania, Greece, Turkey, Cyprus, Syria, Lebanon, Israel, Egypt, Libya, Algeria and Morocco.

² 'The Mediterranean Sea', International EMECS Centre, <<http://www.emecs.or.jp/guidebook/eng/pdf/04mediterranean.pdf>>, accessed 28th March 2015.

³ Freight Transport Statistics, EUROSTAT Yearbook, EUROSTAT <http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Mediterranean_and_Black_Sea_coastal_region_statistics> accessed 28th March 2015.

⁴ International EMECS Centre, <<http://www.emecs.or.jp/guidebook/eng/pdf/04mediterranean.pdf>>, accessed 28th March 2015.

Whilst there are more than 1,000 offshore structures actively engaged in the extraction and exploitation of hydrocarbons in the North East Atlantic and the North Sea, the Mediterranean Sea currently hosts more than 100 active structures, most of them situated off the coast of North Africa.⁵ However, the discovery of considerable amounts of gas in the Eastern Mediterranean is a strong indicator that this number will increase drastically in the near future, with Cyprus, Israel and other Mediterranean countries showing an active interest in the exploitation of this resource. Prospecting off the coast of Malta resumed in 2014, whilst in recent years, Italy has constructed several offshore structures in the Adriatic Sea and is in the process of prospecting in the Strait of Sicily.⁶ In addition, the Mediterranean Sea is one of the world's most heavily traversed oil transportation routes. This renders the prospect of prevention of spillage and contingency of pollution important for Mediterranean Coastal States since such pollution would affect all these States and jeopardise regional efforts to combat pollution and promote environmentally friendly measures.⁷

The exploitation of hydrocarbons is now being viewed with increasing scepticism due to its adverse environmental consequences. This has led to a growth in regional and multilateral agreements to control such effects and guarantee safe exploitation with minimal consequences to the environment.⁸

The European Union is heavily involved in the production of oil and gas, mostly through offshore structures. The Mediterranean currently hosts 123 offshore installations, the majority of these involved in the extraction of gas. Most of these installations belong to non-EU Member States. Most accidents occur in the North Sea, with 3,505 recorded incidents as at 2014, whilst the Mediterranean Sea recorded merely 45 such accidents.⁹

⁵ Scovazzi, Tullio; 'Maritime Accidents with Particular Emphasis on Liability and Compensation for Damage from the Exploitation of Mineral Resources of the Seabed' in Andrea de Guttry, Marco Gestri, Gabriella Venturini (eds), *International Disaster Response Law* (1st, Springer 2012) p. 287.

⁶ *Ibid.*,

⁷ Boxer, Baruch; 'Mediterranean Oil Pollution Monitoring and Control: Technical and Policy Issues', *International Oil Spill Conference Proceedings 1979*: No. 1, p. 283.

⁸ Gao, Zhiguo; 'Environmental Regulation of the Oil and Gas Industry' (1997) University of Dundee, Discussion Paper 16.

⁹ Christou, Michail and Konstantinidou, Argyri Myrto; 'Safety of Offshore Oil and Gas Operations: Lessons from past Accident Analysis', JRC Scientific and Policy Reports 2012 <<http://publications.jrc.ec.europa.eu/repository/bitstream/111111111/27463/1/offshore-accident-analysis-draft-final-report-dec-2012-rev6-online.pdf>> accessed 29th April 2015.

Regardless of the relatively low number of accidents in the Mediterranean, there are a number of features which must be taken into account. The Mediterranean is the only sea in the world where coastal States have been reluctant to declare Exclusive Economic Zones (EEZs). The close proximity of the coastal States themselves would mean the eradication of the high seas in the Mediterranean if EEZs were to be proclaimed.¹⁰ Several Mediterranean States have enacted *sui generis* functional zones without declaring the area an EEZ. In 1997, Spain declared a Fisheries Protection Zone, followed by France in 2004 and Italy in 2006.¹¹

Regardless of the fact that Malta does not claim an EEZ, Maltese fishing rights are not just limited to its territorial sea given that a State may claim an Exclusive Fisheries Zone (EFZ).¹² Article 3(2) of the Territorial Waters and Contiguous Zone Act states that Malta's jurisdiction extends up to a total of twenty-five nautical miles from the Maltese baselines for the purpose of conservation and management of fisheries. An EFZ, although similar in nature to an EEZ, differs with regard to scope since EFZ allows the declaring State to exercise its rights only on living resources, effectively excluding the seabed and subsoil of the Continental Shelf.¹³

It is also important to note that in the Mediterranean there is no seabed under the legal regime stipulated by Part XI of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) Convention. All the seabed and subsoil is found on the continental shelf of coastal States and the sovereign rights of the coastal State over the continental shelf exist *ipso facto et ab initio*¹⁴.

The situation is different with regards to superjacent waters, where there are no conventional rights *ipso facto et ab initio* and coastal States have to proclaim their rights over the established area. In this case, the legal situation has evolved considerably from a *res nullius* to a progressive jurisdictionalisation, similar to the proclamation of an EEZ.¹⁵ Mediterranean Coastal States' reluctance to proclaim EEZs may stem from the issues regarding maritime delimitation and subsequent legal disputes. However, should EU Member States declare an

¹⁰ Rios, Nathalie; 'Environmental Protection of the Mediterranean Sea', *Revista de Estudios Juridicos* 11/2011.

¹¹ Frank, Veronica; *The European Community and Marine Environmental Protection in the International Law of the Sea*, 1st edition, Martinus Nijhoff Publishers, 2007, p. 37.

¹² Attard, David; *The Exclusive Economic Zone in International Law*, Oxford University Press, Oxford, 1987, p. 148.

¹³ *Ibid.*, p. 148.

¹⁴ Nathalie, Rios; *op. cit.*, p. 22.

¹⁵ *Ibid.*,

EEZ, they would automatically lose most of their jurisdiction in superjacent waters which would be transferred to Brussels.¹⁶

All offshore resources fall firmly under the jurisdiction of Coastal States who exercise full sovereignty in their Territorial Waters. However, the risk of an accident with serious transboundary effects cannot be discounted especially in the light of recent accidents.¹⁷

The effect of marine pollution resulting from offshore sources was specifically identified in UNCLOS, which through the provisions of Part XII established an obligation to Contracting Parties to prevent, reduce and control marine pollution arising from seabed activities subject to their jurisdiction, whilst also calling on such Parties to form common strategies to implement these provisions at a regional level.¹⁸ The provisions stipulated in Article 194 and 208 are widely considered as innovative features of this Convention which brought to a global forefront the importance of combating marine pollution.

2. AN INTRODUCTION TO THE OFFSHORE SAFETY DIRECTIVE

The Offshore Safety Directive (hereinafter referred to as the Directive) concerns itself with safety procedures on offshore platforms and other installations. Thus it must be differentiated from the provisions of the Council Directive on the Introduction of Measures to Encourage Improvements in the Safety and Health of Workers at Work, (Directive 89 / 391 /EEC) and the provisions of the Council Directive Concerning the Minimum Requirements for Improving the Safety and Health Protection of Workers in the Mineral-Extracting Industries through Drilling (Directive 92/91/EEC) which concern the human element.

¹⁶ Ibid., p. 24.

¹⁷ Gavouneli, Maria; 'Offshore Installations: A Comprehensive Regime?', MAPILEAN e-Bulletin, 4th April 2013, <<http://www.mepielan-ebulletin.gr/default.aspx?pid=18&CategoryId=4&ArticleId=137&Article=Offshore-Installations:-A-Compehensive-Regime?>> accessed 21st March 2015.

¹⁸ Roggenkamp, M et al (eds); *Energy Law in Europe: National, EU and International Regulation*, 2nd edition, Oxford University Press, 2007, para. 2.99.

2.1 The Preamble to the Directive

Recognising the environmental risks posed by the exploration and exploitation of hydrocarbons, sub-article 1 of the Preamble clearly states that the objective of the Directive is to 'reduce as far as possible the occurrence of major accidents relating to offshore oil and gas operations and to limit their consequences'. The Directive recognises that the current regulatory framework throughout the EU is fragmented and divergent, besides highlighting discrepancies with regard to liability. Whilst there are several instances of good practices in individual EU Member States, these are applied inconsistently and best regulatory practices which are to be applied throughout the EU are required.

In accordance with the principles laid down in the Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, the Directive stipulates that the general public is to be involved effectively in the decision-making process. This may take place through public consultations (enshrined in both municipal law and the Environmental Liability Directive) and through the provision of adequate information.

Sub-article 22 of the Preamble makes reference to the need to enact specific legislation to cater for major hazards relating to the offshore oil and gas industry which are currently unregulated under EU law, 'such as containment and structural integrity, the prevention of fires and explosions and the limitation of adverse environmental impacts following a major accident.' With regard to this point, the Directive addresses this aspect by stipulating compulsory contingency planning for offshore platforms and other installations. These are to be regulated by the national Competent Authority and may be subject to approval by the EU. The Preamble mandates the effectiveness of the major hazard controls in offshore waters of the EU Member States and stipulates that this report should be prepared and amended accordingly. No installation should be operated in offshore waters of Member States unless the Competent Authority accepts the report on major hazards submitted by the operator of the structure or its owner.¹⁹ The report on major hazards should, take into account risks to the environment, including the impact of meteorological conditions and climate change on the installations.²⁰

¹⁹ Preamble to the Offshore Safety Directive, paragraph 27.

²⁰ *Ibid.*, paragraph 33.

The Operator is also bound to follow best practices adhered to by the EU. However, in view of the complexity of offshore oil and gas operations, the implementation of the best practices by the operators and owners requires 'a scheme of independent verification of safety and environmental critical elements throughout the lifecycle of the installation, including, in the case of production installations, the design stage'.²¹

A major cause for concern which is explicitly referred to in the Preamble concerns transboundary pollution. The Preamble states that Operators should notify Member States without delay if a major accident occurs or may be about to occur, so that the Member State can initiate an appropriate response. Such notifications should include details concerning the location, magnitude and nature of the actual or imminent major accident, the Operator's initial response, if any, and the worst case escalation scenario including the possibility of transboundary pollution. In order to ensure an effective response to emergencies, operators are compelled to prepare internal emergency response plans that are site specific and based on risks and hazard scenarios identified in the major hazards report, submit such reports to the Competent Authority and maintain such resources as necessary for prompt execution.²²

The Preamble makes reference to the sharing of data between Member States. Particularly, information on major accidents in offshore oil and gas operations happening outside the European Union can help in further understanding their potential causes, and thus further developing the regulatory framework. Therefore, 'all Member States, including landlocked Member States and Member States with offshore waters which do not have offshore oil and gas operations or licensing activities, should require reports on major accidents occurring outside the Union which involve companies registered in their territory, and should share this information at Union level'.²³

The Preamble highlights that national external emergency plans should be based on risk assessment, taking into account the reports on major hazards for the particular installations concerned. Member States should take into account the most up-to-date Risk Assessment and Mapping Guidelines for Disaster Management as prepared by the Commission.²⁴

The European Commission's role in ensuring the sharing of data in accordance with the relevant provisions of Regulation 182/2011 concerning Mechanisms for Control by the

²¹ Ibid., paragraph 31.

²² Ibid., paragraphs 34-35.

²³ Ibid., paragraph 39.

²⁴ Ibid., paragraph 53.

Member States of the Commission's Exercise of Implementing Powers is referred to in Sub-Article 43 of the Preamble. The European Maritime Safety Agency, established through Regulation (EC) No. 1406/2002, is another partner which may be employed by the Member States to safeguard the environment and participate in contingency planning. Adequate protection for whistleblowers must also be guaranteed.

The Preamble recognises that not all coastal States which are members of the European Union may have offshore industries and that consequently the provisions of the Directive may be considered as superfluous to the these States. Nevertheless, due to the shared coastline and geographic features of the Mediterranean Sea it is advisable that given the potential of transboundary pollution, all coastal States should possess a contingency plan and enact inter-State procedures which would be enacted in such an event.²⁵

This provision is directly relevant to the Maltese islands, since despite the lack of an effective offshore industry, the exploitation of hydrocarbons remains a long-term goal for the Maltese Government. In addition, Malta's geographic position makes it vulnerable not only to oil spills emanating from vessels but also from the offshore industry in Northern Africa and the Strait of Sicily.

2.2 The Provisions of the Directive

The Offshore Safety Directive consists of nine Chapters encompassing forty four Articles and nine corresponding Annexes. The scope of the Directive is explicitly stipulated in Article 1 of the Directive, which states that the Directive establishes a minimum set of requirements which must be implemented by EU Member States in order to prevent major accidents in the oil and gas sector and limit the consequences of any such accident if it occurs. Chapter I also contains a list of standard definitions useful with regard to the interpretation of this Directive.

Chapter II of the Directive concerns the prevention of major accidents relating to the offshore sector. Article 3 states that Member States are to ensure that Operators carry out all operations on the basis of risk management so that any adverse effects to the environment are restricted. Municipal law must also stipulate provisions to limit consequences to health and the environment resulting from such activities.

²⁵ Ibid., paragraph 60.

Article 4 states that Member States must not issue any permits or licenses to prospective Operators or Licensees prior to ensuring that the applicant possesses both the technical capabilities and the financial resources to adhere to his obligations. A license may not be granted unless the Competent Authority is satisfied that the applicant is in a position to make good for any liabilities which may arise. The applicant must submit documentation to this effect and the Member State is in turn to provide the applicant with assistance to demonstrate financial capability. Member States must also establish procedures to ensure prompt and adequate payment of compensation in case of transboundary pollution.

When assessing the technical and financial capabilities of an applicant for a licence, special attention shall be paid to any environmentally sensitive marine and coastal environments.²⁶ This is coherent with EU legislation protecting the environment currently in force. Marine Protected Areas are also protected through this provision.

Article 5 focuses on participation by members of the general public in accordance with the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, better known as the Aarhus Convention. Article 5(1) states that no work on offshore installations may commence prior to public consultation and the Member State is under an obligation to inform the public of any pertinent information within reasonable timeframes.

Article 6 regulates licensing of offshore operations and limits these to pre-established areas identified for that particular purpose. The Member State has a right to revoke any licenses if it determines that the applicant is not in a position to honour his obligations. A Major Hazards Report must be submitted prior to the initialisation of works, whilst a safety zone around the installation must be enacted. Moreover, Article 6 (8) states that Member States shall establish a mechanism for effective participation in tripartite consultation between the Competent Authority, operators and owners, and worker representatives in the formulation of standards and policies dealing with major accident prevention.

On the other hand, Article 7 states that liability is to be considered in accordance with the requirements laid down in the Environmental Liability Directive (Directive 2004/30/EC). In addition, Member States shall ensure that the licensee is financially liable for the prevention and remediation of environmental damage as defined in the Environmental Liability

²⁶ Article 4 (6) of the Offshore Safety Directive.

Directive, caused by offshore oil and gas operations carried out by, or on behalf of, the licensee or the operator.

Articles 8 and 9 deal with the appointment of the Competent Authority and its functions. Besides ensuring compliance by the applicant, the Competent Authority must also serve as an advisory board to other relevant authorities. It is charged with assessing plans and documentation submitted to it and serves as the main point of reference for the government of the State and investors alike. The Competent Authority must be impartial and transparent in its operations. Should the Competent Authority be divided into more than one body, the Member State must ensure that all such entities collaborate together efficiently.

Article 10 concerns the role played by the European Maritime Safety Agency, which following the expansion of its remit has been entrusted with assisting the European Commission and Member States alike on request in detecting and monitoring any potential hazards emanating from offshore installations and other structures, as well as assisting the Member State with the preparation and eventual execution of a contingency plan, especially in cases of transboundary pollution.

The documents required to effect offshore oil and gas operations are listed in Article 11, whilst Article 12 caters for the Major Hazards Report. This report is to be prepared by the operator and submitted for approval by the Competent Authority, which may request any additional information or amendments as it deems fit. This Report shall be subject to periodic review by inspectors at least every 5 years or at the Competent Authority's discretion. Article 13 contains separate provisions in case of non-production installations.

An internal emergency response plan, as stipulated in Article 14, must be submitted in turn by the Operator, who must also notify and provide relevant information to the Member State concerning his operations. Such information, as well as the conduct and operations of the Operator are subject to independent verification, in accordance with Article 17. The powers of the Competent Authority with regards operations on installations are subsequently listed in Article 18. Articles 11 to 18 encompass Chapter III of the Directive.

Chapter IV emphasises the Prevention Policy promoted by the Directive. Article 19 concerns major accident prevention by operators and owners, who are required by the Competent Authority to submit detailed plans manifesting their corporate major accident prevention policy. A separate document concerning a safety and environmental management system

must also be submitted in accordance with the requirements laid down in Article 19 (3). The Member State concerned should also encourage the integration of such plans between different Operators, who must compile a complete inventory of emergency response equipment available on site and on land.

Article 21 states that the Member State should take all measures to ensure compliance with the provisions of this Directive and that the Competent Authority performs its duties diligently and efficiently. The Competent Authority must also develop a system for confidential reporting on safety and environmental concerns resulting from offshore operations whilst protecting the identity of the whistleblower.

Chapter V concerns transparency and freedom of information, highlighting specific aspects of the Aarhus Convention. Article 23 stipulates that Member States are bound to share relevant data with the Commission. In turn, Article 24 obliges the Member States to operate transparently. All major accidents are to be investigated thoroughly by the Member State having jurisdiction, and a summary of the findings must be submitted to the Commission. The Competent Authority is duly empowered to implement any recommendations arising from the subsequent investigation. Cooperation between Member States is subsequently detailed in Article 27, which expounds on the importance of a coherent approach between Member States in order to achieve good results and tackle any arising incidents as soon as they occur. Article 27 falls under the remit of Chapter VI, which concerns cooperation between Member States and the European Union Offshore Oil and Gas Authorities Group (EUOAG), together with the submission of annual reports. Member States are also compelled to hold an investigation following accidents.

Chapter VII of the Directive concerns emergency preparedness and response provisions. The Competent Authority must ensure that the approved plans submitted by the Operator are enacted in full. These plans must be fully consistent with the plans adopted by the Competent Authority as referred to in Article 29. Member States must also ensure that all equipment is serviced and may be used promptly. Regular updates must also be undertaken to cater for emerging situations.

Article 29 stipulates that Member States must prepare external emergency response plans covering all offshore activities and connected infrastructure within their jurisdiction. Such plans shall be prepared with the collaboration of the owners of the installations and the relevant Competent Authorities. These plans should also be submitted to the European

Commission. Suitable measures must be taken by Member States to ensure collaboration between one another to cater for instances of transboundary pollution. The Operators of offshore installations must also test their preparedness to act efficiently on a regular basis. Operators must inform the Member State holding jurisdiction without delay in case of any major accident. The Member State must then provide assistance to the Operator.

Chapter VIII of the Directive caters for transboundary effects. Even in the application stage, Member States must communicate with other Member States who may be potentially affected by transboundary pollution for that State to play a role in the adjudication of the application. Major hazards should be readily identified and catered for. The European Commission must be notified in the event of any major threat capable of transboundary effects. On the other hand, Member States without offshore oil and gas operations under their jurisdiction shall appoint a contact point in order to exchange information with relevant adjacent Member States. Member States without offshore oil and gas operations under their jurisdiction shall coordinate their national contingency planning in the marine environment with other relevant Member States to the extent necessary to ensure the most effective response to a major accident.²⁷

2.3 Annexes to the Directive

The Directive contains nine Annexes which serve as auxiliary aids to the implementation of the Directive. Annex I contains information which must be submitted to the Competent Authority pursuant to Article 11, which concerns documents which must be submitted to enable the applicant to carry out offshore oil and gas operations. Additional information includes information concerning the Major Hazards Report for production and non-production installations, information pursuant to well operations, verification schemes, combined operations, the operation of safety and management information systems and internal emergency response plans. Annex II contains details which must be present in reports for well operations submitted pursuant to the provisions of Article 15 (4).

Annex III contains the provisions relating to the appointment and functioning of the Competent Authority in accordance with the provisions of Articles 8 and 9 of the Directive. Annex IV lists provisions which must be undertaken by operators and owners alike to prevent

²⁷ Chapter VIII of the Offshore Safety Directive, Articles 31 and 32.

major accidents as stipulated in Article 19 whilst Annex V stipulates requirements pertaining to the selection of the independent verifier as stated in Article 17 (3).

Additional requirements with regard to priorities for cooperation between owners, operators and the Competent Authority pursuant to Article 19 (7) are stated in Annex VI. On the other hand, Annex VII contains information to be provided in external emergency response plans pursuant to Article 29. Annex VIII incorporates particulars to be included in the preparation of external emergency response plans in accordance to Article 29. Annex IV enshrines provisions pertaining to the sharing of information and transparency.

3. AN INTRODUCTION TO THE MALTESE SCENARIO

The exploration and exploitation for hydrocarbons has featured prominently as a policy actively pursued by the Maltese Government, with the first exploratory evaluations for hydrocarbons taking place in 1958. Nevertheless, no hydrocarbons available in commercial quantities were discovered by prospectors. Issues such as the Malta/Libya Continental Shelf Dispute²⁸ halted further prospecting, and although occasional studies continued to be carried out, the exploration for such hydrocarbons lacked momentum.

Since 2010, the Maltese Government has been actively pursuing the exploration for hydrocarbons and has entered into several agreements with various entities to conduct prospecting on Malta's Continental Shelf. This action was spurred by the discovery of oil and gas reserves in geological strata in the continental shelf belonging to Italy and Libya, in close proximity to the Maltese continental shelf. Estimates of the amount of oil and gas in Malta's continental shelf vary, with estimates including between 9.8 and 62.8 million stock tank barrels of oil, 12.8 billion cubic feet of gas and up to 260 million barrels of oil.²⁹

3.1 Local Legislation

In Malta, the Continental Shelf Act³⁰ lays claim to the territorial sea and contiguous zone (regulated by the Territorial Waters and Contiguous Zone Act)³¹ around the Maltese islands,

²⁸ Continental Shelf (Libyan Arab Jamahiriya/Malta) Judgement, I.C.J, Reports 1985, p. 13.

²⁹ European Commission - DG Energy, Civil Liability, Financial Security and Compensation Claims for Offshore Oil and Gas Activities in the European Economic Area, Final Report, 14th August 2014.

³⁰ Continental Shelf Act, Chapter 194 of the Laws of Malta.

³¹ Territorial Waters and Contiguous Zone Act, Chapter 226 of the Laws of Malta.

including claims on the continental shelf and any resources found therein. Rather than transposing solely the UNCLOS regime into Maltese law, the Act also regulates pollution resulting from discharges or accidental releases from pipelines and as a consequence of exploration or exploitation of the seabed and its subsoil for natural resources.³²

The Environment and Development Planning Act³³ constitutes the principal legislation, together with its relevant regulations. Article 3 states that 'It shall be the duty of every person together with the Government to protect the environment and to assist in the taking of preventive and remedial measures to protect the environment and manage natural resources in a sustainable manner'. Article 4 consequently lays down the duty of the Government to protect the environment for the benefit of present and future generations. These duties include managing the environment in a sustainable way whilst keeping environmental concerns in mind during decisions, taking preventive and remedial steps to address pollution and environmental degradation, collaborating with other governments and applying Best Available Techniques and Best Environmental Practices.³⁴

This Act constitutes the Malta Environment and Planning Authority (MEPA) as the Competent Authority with regards to environmental concerns in development.³⁵ Article 51 regulates the Strategic Plan for the Environment and Development, which is a strategic document regulating the sustainable management of land and sea resources based on an integrated planning system. This document must set out policies and ensure that these are spatial, holistic and comprehensive with regard to environmental protection. Access to information is also protected through this legislation.³⁶

This legislation also establishes the Environment and Development Brief, which is described as a document setting out detailed planning guidance of a specific area. This brief shall consist of a written statement and appropriate diagrams, besides all relevant information concerning the site in question.³⁷ Licensing is catered for in Article 66, which states conditions under which licenses may be granted.³⁸

³² Ibid., Article 7.

³³ The Environment and Planning Act, Chapter 504 of the Laws of Malta.

³⁴ Ibid., Article 4 et seq.

³⁵ Ibid., Article 6 et seq.

³⁶ Ibid., Article 64.

³⁷ Ibid., Article 65.

³⁸ Ibid., Article 66 et seq.

The main legislative body with regard to the exploration and exploitation of hydrocarbons in Maltese legislation are the Petroleum (Production) Act³⁹ and the Petroleum (Production) Regulations.⁴⁰ Article 3 of the Petroleum (Production) Act vests the property of petroleum in its natural condition in strata existing in Malta in the Government of Malta, which is the only entity authorised to issue licenses for exploration and exploitation purposes. This license is to be issued by the competent Minister, regulated by means of the call for applications. Following the grant of a license, an official notification must be published in the Government Gazette.

Article 4 (6)(a-c), stipulates the conditions pertaining to the grant of a license. Such conditions include technical and financial capabilities of the applicant, relevant process and economic and financial considerations.

Article 5 states that in accordance with any international obligations, the Minister may make regulations regulating the exploration, prospecting and mining for petroleum in Malta, including the drilling for and production of petroleum and the conservation of the petroleum resources, including the manner in which applications may be made, fees applicable, conditions with regard to the size of the area affected by the license and model clauses together with relevant penalties. Examination of the area covered by the license is permissible following the authorisation of the President of the Republic, in accordance with Article 6, in accordance with the relevant provisions.

The Petroleum (Production) Regulations differentiate between a production and exploration license. A production license is also applicable for exploration purposes. Article 4 stipulates the procedure which must be adhered to when applying for these kinds of licenses. All applications are confidential. Relevant fees are stipulated in Article 5 whilst the role of the competent Minister with regard to the publication of licenses is stipulated in Article 6. Article 7 states that all licenses incorporate the model clauses respectively set out in the Model Production Sharing Contract (2001) and the Model Exploration Study Agreement (2001) and other terms and conditions as may be specified in the call for applications.

The Schedule to the Petroleum (Production) Regulations enshrines the form of application for a Production License or an Exploration License and contains all the details which must be present in all applications.

³⁹ Petroleum (Production) Act, Chapter 156 of the Laws of Malta.

⁴⁰ Petroleum Production Regulations, S.L 156.01 of the Laws of Malta.

3.2 The 2014 National Audit Office Report

A Performance Audit published by the National Audit Office (NAO) in July 2014 regarding Malta's level of preparedness to deal with oil pollution at sea portrayed a dire picture regarding the Maltese Islands' ability to deal with such pollution from vessels, let alone large-scale accidents caused by offshore structures.⁴¹

The Performance Audit highlighted a general lack of preparation, as well as lack of trained personnel and lacunae in the National Contingency Plan, which is still to be drafted into law. The Audit also stated that insufficient funding, coupled with a general low priority granted to this process greatly hindered the implementation of the National Marine Pollution Contingency Plan.⁴² The Audit also added that the Maritime Safety and Pollution Prevention Committee, which had been established by the Vessel Traffic Monitoring and Reporting Requirements Regulations⁴³, had not been convened for the last two years. This is especially worrisome since part of the role of this Committee is to draft the legal notice transposing this Contingency Plan into legislation. In addition, despite the requirements pertaining to Contingency Plans, nearly half of the oil spill contingency plans concerning Shipping Terminals, Facilities and Yachting Centres in Malta had yet to be submitted to the Competent Authority.⁴⁴

Discrepancies regarding the role of governmental authorities and the depreciation of the quality of equipment were also cited by the Audit, together with the lack of participation by key players in oil spill simulations and the absence of a detailed inventory of equipment, further manifesting the grave situation currently faced by the Maltese Islands in terms of preparation and response to oil pollution at sea.

3.3 Discrepancies between Municipal Law and the Directive

Even *prima facie*, it is evident that Maltese legislation is not conformant with the Offshore Safety Directive, which must be implemented by EU Member States by June 2015. Moreover, Maltese legislation appears to be fragmented, with various Acts regulating diverse areas. The shortcomings listed in the NAO Report depict a bleak picture regarding not only

⁴¹ National Audit Office (NAO), 'Malta's Level of Preparedness to Deal with Oil Pollution at Sea', July 2014.

⁴² *Ibid.*, p. 8-13.

⁴³ Vessel Traffic Monitoring and Reporting Requirements Regulations, S.L 499.34 of the Laws of Malta.

⁴⁴ NAO, *op.cit.*, p. 35-36.

technical knowledge but also financial means to implement measures to fulfil Malta's international obligations. Taking into consideration the consequences of an oil spill off the Maltese coast, it is imperatively important for this situation to be rectified.

Through the enactment of various European Directives and Regulations, Malta's position with regard Environmental Impact Assessments is coherent with EU standards. However, the adhesion of the EU to the Offshore Protocol to the Barcelona Convention has introduced a new dimension to offshore safety. In fact, this Protocol is seen as being complementary to the Offshore Safety Directive and the incorporation of the relevant provisions of this Protocol to the proposed legislation incorporating the Offshore Safety Directive into Maltese legislation would provide for the best legislative measures to date with regard to this sector.

The Petroleum (Production) Act and the Petroleum Production Regulations must be repealed and incorporated accordingly into one document. The Petroleum Production Act was first enacted in 1958 and subsequently amended a number of times, the last being in 2014. Nevertheless, regardless of the ambitions by successive Maltese governments to develop a successful offshore industry following the potential discovery of hydrocarbons in commercial quantities, this legislation remains lacking in detail, merely providing an outline of the criteria required to engage in prospecting and exploitation. In fact, this legislation contains few provisions, most of which are concerned with licensing and the powers of the competent Minister to regulate the sector.

On the other hand, the Petroleum Production Regulations, enacted in 2001 and last amended in 2007, merely contain provisions regulating licensing. No other provisions pertaining to requirements by the applicant and the role of the Competent Authority are prescribed. This lack of detail contrasts with the requirements which are currently being implemented by the EU through the Offshore Safety Directive.

The current definitions need to be reviewed to reflect definitions approved by the European Union, whilst the Competent Authority must be vested with the authority and financial means it requires to operate efficiently. This measure must be accompanied by further collaboration with the European Maritime Security Agency, the EU and neighbouring States alike. The relevant provisions enshrined in Articles 8 and 9 of the Directive must duly be incorporated in the new legislation. However, these must be supplemented by additional measures.

Currently, Maltese legislation empowers the Competent Authority to revoke licenses and ensure that a prospective applicant possesses both the necessary financial resources and technical expertise to fulfil his obligations prior to bidding for a license as prescribed in the Petroleum Production Regulations. This measure is conformant with the Offshore Safety Directive, but must be supplemented by additional measures stipulated in the Directive itself. Maltese legislation provides for the publication of licenses granted by the competent Minister for exploration and exploitation purposes, however this provision must be embellished by the relevant provisions of the Directive with regard to participation by the general public. To this effect, the provisions incorporated in the Environment and Planning Act must be amended or provided for in the new legislation in order to ensure that these provisions are implemented, both with regard to civil society and local authorities. The relevant provisions as applied to local development projects should be incorporated in the new legislation given to the widespread effects of such a project not only at a local level but also at a regional level.

Due to Malta's geographic position, the provisions of the Directive pertaining to transboundary pollution are of utmost importance. Given that Malta has yet to achieve the status of a nation actively involved in the exploitation of hydrocarbons, the emphasis must shift to controlling transboundary pollution and implementing mechanisms to ensure rapid intervention to protect human health and the environment alike. To this effect, any projects relating to offshore exploitation, in accordance with the provision of the Directive, may only proceed following consultation with neighbouring States. This collaboration should also extend to the enactment of contingency planning.

With regard to contingency planning, the NAO Report clearly stated that currently, such plans are not up to standard and in some cases totally absent despite requirements stating that such plans are fundamental to the installation or activity concerned. This situation must be rectified immediately and the Competent Authority must take a central role in addressing this fault. The contingency plans stipulated in the Directive, such as the internal contingency plan and the external contingency plan must be addressed and implemented accordingly, whilst more stringent requisites concerning the contingency plans which must be prepared by the Operator must be enforced by the Competent Authority.

In line with the recommendations of the NAO Report, the Competent Authority must ensure that routine drills are carried out without fail. The new legislation should incorporate specific provisions regarding such drills and stipulate penalties should any of the concerned parties

neglect from participating. With regard to the equipment necessary in case of a major accident, the new legislation must incorporate provisions to ensure that such material, as well as other materials, are kept in good condition with trained personnel available at all times in order to tackle accidents at their source.

Presently, Maltese legislation does not expressly incorporate the submission of a Major Hazards Report as required by the Directive. Even though such a document may be submitted as part of the contingency plan, the submission of this report must be handed over to the Competent Authority separately in order for the Authority to assess any potential dangers posed by the proposed installation or activity.

The requirement that all activities must be carried out in accordance with Best Environmental Practices and Best Available Techniques is not explicitly stated in Maltese legislation. This requirement is expressly stated in the Directive and consequently must be incorporated in Maltese legislation. Given that this concept is still relatively undefined even in European legislation, the Competent Authority should have the discretion to determine whether the practices operated by the applicant amount to good practices. In an effort to phase out potentially outdated installations which may not necessarily be fully conformant with EU legislation (The Offshore Safety Directive itself only applies to installations constructed following the enactment of this Directive), the Competent Authority should have the authority to determine installations which may be permitted to operate under licenses issued by the Authority.

3.4 Difficulties with regard to the incorporation of the Offshore Protocol to the Barcelona Convention and other salient legislation

The Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf, the Seabed and its Subsoil, more commonly referred to as the Offshore Protocol to the Barcelona Convention, was one of the new protocols introduced to the Barcelona Convention following a Plenipotentiaries Meeting held in 1994. Thirteen Mediterranean countries, amongst them Malta, were present at this meeting.⁴⁵ The Barcelona Convention was part of the Mediterranean Action Plan operating under the auspices of the United Nations Environment Programme. However, it would take

⁴⁵ UNEP, *MEDWAVES*, Winter 1994-1995.

more than a decade for this Protocol to enter formally into effect due to the lack of deposit of the instruments of ratification.⁴⁶ In fact, the EU only adhered to this Protocol in January 2013, following its ratification by Albania, Cyprus, Libya, Morocco, Tunisia and Syria, which finally led to the Protocol's ratification in March 2011.⁴⁷

The Offshore Protocol and the Offshore Safety Directive both aim to combat pollution in the Mediterranean basin resulting from offshore sources but differ with regard to their scope. Whilst this can prima facie be seen as an advantage since the simultaneous incorporation of these two legislative documents may serve to compile comprehensive legislation encompassing divergent issues, the lack of harmonisation between the two may render such incorporation arduous. In fact, whilst the Offshore Safety Directive is comprehensive in nature, the Offshore Protocol is more technical and focuses on the activities carried out by the offshore industry.

In order to comprehend the salient differences between these two documents, it is important to consider their background. Since the Offshore Protocol has not undergone any amendments since the document was opened for ratification in 1995, several provisions need to be amended in order to reflect the modern necessities of the offshore industry. On the other hand, the Offshore Safety Directive was enacted following a brief consultation session, which received little feedback from the stakeholders. In addition, pressure from Member States with strong offshore interests contributed to the eventual decision to implement a directive rather than a regulation, which would have been more effective with regard to regulation.

Following the adoption of the Offshore Protocol and the implementation of the Offshore Safety Directive, it is crucial that these two legislative documents complement each other in order to prevent conflicts with regard to their application. Grave discrepancies between these two documents are available from the outset, with discrepancies ranging from the terminology used to the powers of the Competent Authority and the procedure to be followed. Given that it is customary for EU directives to make reference to other directives in the text of the legislation itself, it is even more important for the terminology to be harmonised and applied cohesively in order to prevent misinterpretations.

⁴⁶ Ibid.,

⁴⁷ UNEP Press Release, 'EU Accession to the Offshore Protocol' <<http://www.ypeka.gr/LinkClick.aspx?fileticket=U9arEHp%2BJQQ%3D&tabid=550&language=el-GR>> accessed 18th February 2015.

The concept of harmonisation of terminology has been previously promulgated through international conventions, most notably through UNCLOS, which effectively harmonised the term 'marine pollution'. This concept has continued to evolve, and today the term 'pollution' has been largely substituted by the term 'degradation' in order to expand its remit considerably so as to include erosion, sedimentation and overexploitation of fisheries.⁴⁸

Regardless of the fact that the Offshore Protocol may be considered as outdated as it has not undergone any amendments after it was adopted in 1994, most of its Annexes remain relevant. This was recognised during the First Offshore Working Group Meeting in 2013, which was held in Malta.⁴⁹ During this Meeting, the parties agreed that they would focus on ratification of the protocol rather than discussing any amendments. Nevertheless, specific provisions pertaining to the disposal of noxious substances and banned materials may be considered as acting complementary to the Offshore Safety Directive. Thus, such provisions may have to be incorporated in order to broaden the scope and application of the Offshore Safety Directive, as well as to provide auxiliary support for its provisions. This was also stated in the Milieu Report, which analysed salient differences between the Offshore Protocol and Offshore Safety Directive and proposed harmonisation measures.⁵⁰

4. EXPLANATION OF THE DRAFT LAW

This legislative draft is divided into three distinct parts, namely the Preliminary Provisions, Safety on Offshore Structures and General Provisions. These are further supplemented by thirteen annexes regulating various aspects such as documentation which needs to be submitted to the Competent Authority, the functions of the Competent Authority, provisions for the prevention of major accidents, schemes for independent verifications, provisions for cooperation between the Competent Authority and operators of the offshore structures,

⁴⁸ MEDEXPOL, REMPEC/WG.34/19 <http://www.rempec.org/admin/store/wyswiglmg/file/News/Forthcoming%20Meetings/MEDEXPOL2013/E-%20Working%20Docs/WG_34_19%20-%20Study%20on%20the%20International%20Best%20Practices-.pdf> accessed 5th April 2015.

⁴⁹ UNEP, Report of the First Offshore Protocol Working Group Meeting, Malta, 2013 <<http://www.rempec.org/admin/store/wyswiglmg/file/News/EConsolidated%20Report.pdf>> accessed 16th April 2015.

⁵⁰ Milieu Ltd, Safety of Offshore Exploration and Exploitation Activities in the Mediterranean: Creating Synergies between the forthcoming EU Regulation and the Protocol to the Barcelona Convention, 2013, <<http://ec.europa.eu/environment/marine/international-cooperation/regional-sea-conventions/barcelona-convention/pdf/Final%20Report%20Offshore%20Safety%20Barcelona%20Protocol%20.pdf>> accessed 20th April 2015.

external emergency planning and the provision of information to ensure transparency. The Annexes also contain lists of prohibited materials and substances, as well as procedures that must be followed in case of dumping and disposal of waste and garbage.

This legislative drafting has served to repeal the Petroleum (Production) Act and the Petroleum Production Regulations and incorporate the relevant provisions of these legislative documents into one comprehensive document. The relevant provisions of both documents have thus been incorporated accordingly and further supplemented by the provisions of the Offshore Safety Directive, the Offshore Protocol to the Barcelona Convention and other legislation, mostly EU Directives.

Nevertheless, discrepancies in the text of complementary legislation provide additional challenges to legislators, particularly within the EU. Given that the EU has adopted both the Offshore Protocol and the Offshore Safety Directive, coastal States may find themselves unable to implement the provisions of the former without infringing on the requisites of the latter. This is a matter of concern particularly since Member States may face disciplinary action for failure to implement EU legislation into municipal law. For the purpose of this draft law, only the provisions of the Offshore Safety Directive will be incorporated into Maltese legislation. Additional provisions pertaining to the Offshore Protocol or other legislation will also be incorporated subject to their compatibility with the Offshore Safety Directive and other international conventions to which Malta is party to.

For the purposes of this drafting project, the legislative regime implemented by Cyprus, an island-State EU Member with a vibrant offshore industry has also been considered. Regardless of the fact that as an EU Member State Cyprus has harmonised its legislation in accordance with EU directives and regulations, it is one of the few Mediterranean coastal States to have ratified the Offshore Protocol. Thus, the successful implementation of the Offshore Safety Directive and the Offshore Protocol in Cypriot legislation should provide a model for future legislative regimes. This is especially relevant to the Maltese Islands due to the fact that both Malta and Cyprus share several characteristics as Island-States within the EU. Thus, Malta can benefit from due consideration of the Cypriot legal regime with regard to the offshore sector.

Through the incorporation of EU directives into a new Act containing the relevant provisions from the previous legislative regime, the draft law provides for a comprehensive approach encompassing all the legislation pertaining not only to offshore safety but also to the

exploration and exploitation of the continental shelf. International Conventions, such as the provisions of the Aarhus Convention pertaining to freedom of information and public involvement in planning decisions have also been duly incorporated.

Whilst the Offshore Safety Directive provides for most provisions to be implemented by the Member States on their own accord, this draft legislation identifies the Competent Authority and relevant public official who are to be held accountable for the implementation of the provisions. The Draft also grants the Competent Authority the power to hold mandatory safety drills and take legal action against non-participants. This will serve to increase preparedness and response in case of an accident.

Thus, the implementation of the proposed legislative regime will serve not only to update Maltese legislation and render it compliant with EU directives, but also provide a comprehensive document encompassing all relevant provisions in one document regulating most aspects pertaining to the offshore industry. Regardless of the fact that Malta does not currently have an offshore industry, the incorporation of such legislation is beneficial since this legislation is not confined to oil and gas production platforms, but all offshore structures.

This draft legislation considerably expands the remit entrusted to the Malta Environment & Planning Authority (MEPA), the Competent Authority identified by Maltese legislation. It is advisable that a specific branch or separate entity is established in order to ensure that the provisions of this draft legislation are implemented. This draft legislation has effectively brought together most legislation regarding the offshore sector in Malta into one law, effectively facilitating the process through which interested prospectors and the general public alike may have easier access to such legislation. This is especially important with regard to the specific provisions concerning transparency and public consultations which have to be carried out prior to any license being issued by the Competent Authority.

5. CONCLUDING REMARKS

In order to amend Maltese legislation in such a way as to render it conformant with EU legislation, it is not sufficient to merely transpose the Offshore Safety Directive but also adhere to other requirements stipulated in separate European legislation. Regardless of the fact that the majority of such legislation is already transposed into Maltese law, albeit in different acts rendering legal coherence fragmented, newly enacted legislation, such as the

Marine Spatial Planning Directive, the Council Decision ratifying the Offshore Protocol to the Barcelona Convention and the Offshore Safety Directive itself need to be duly analysed in order to ensure that all pertinent legislation is duly transposed into municipal law. This transposition must be accompanied by diligent conduct by the Competent Authority to ensure that all regulations are adhered to, both by the Government and potential investors. The adoption of best practices developed in other longstanding Conventions, such as MARPOL, may also be introduced in order to adopt longstanding practices into the national framework and the European *acquis communautaire*.

The successful implementation of these various legislations into one draft legislation will undoubtedly assist in the regulation and enforcement of law in the offshore sector, leading to increased safety. Such safety is not only relevant to the Maltese islands but also to the Mediterranean, further increasing the impetus of this draft legislation should it be enacted.

The provisions of this draft legislation have successfully incorporated the provisions of both the Offshore Safety Directive and the Offshore Protocol to the Barcelona Convention, consequently incorporating both legislative documents into Maltese legislation through the proposed draft Act. As well as successfully amending Maltese legislation in such a way as to render it compliant with the requirements of European law, this draft legislation contains sufficient provisions to fully cover prospecting and exploitation activities on the continental shelf and its subsoil, whilst also catering for any industrial accidents resulting in accidental pollution emanating from offshore installations.

The incorporation of this draft legislation into Maltese law would not only serve to harmonise existing legislation with the European *acquis* by enacting the necessary amendments, but would also serve to ensure that economic necessity is balanced with environmental concerns. The economic and environmental consequences of a serious industrial accident would cause harm to the entire Mediterranean. Furthermore, Malta's strategic position in the Mediterranean renders it imperative for Maltese legislation to be able to address any environmental issues which may arise, especially if the Maltese islands succeed in developing a sustainable offshore industry.

Chapter ____

THE OFFSHORE SAFETY ACT (An Act to Incorporate the Safety of Offshore Oil and Gas Operations and Amending Directive 2004/35/EC (Offshore Safety Directive, Directive 2013/30/EU) and other Relevant Legislation relating to Offshore Activities into the Laws of Malta, hereby Regulating the Exploration and Exploitation of Hydrocarbons on the Continental Shelf and repealing the Petroleum (Production) Act and the Petroleum Production Regulations)

[Date]

Act ____ of 2015.

1. The Short Title of this Act is the Exploration and Exploitation of Hydrocarbons and Offshore Safety Act. Title

2. In this Act, unless explicitly stipulated:

Interpretation

"Aarhus Convention" means Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters;

"acceptable", in relation to a risk, means a level of risk for which the time, cost or effort of further reducing it would be grossly disproportionate to the benefits of such reduction. In assessing whether the time, cost or effort would be grossly disproportionate to the benefits of further reducing the risk, regard shall be had to best practice risk levels compatible with the undertaking;

"acceptance", in relation to the report on major hazards, means the communication in writing by the Competent Authority to the operator or the owner that the report, if implemented as set out therein, meets the requirements of this Act. Acceptance does not imply any transfer of responsibility for control of major hazards to the Competent Authority;

"chemical use plan" means a plan drawn up by the operator of any offshore installation which shows:

- (i) The chemicals which the operator intends to use in the operations;
- (ii) The purpose or purposes for which the operator intends to use the chemicals;
- (iii) The maximum concentrations of the chemicals which the operator intends to use within any other substances, and maximum amounts intended to be used in any specified period;
- (iv) The area within which the chemical may escape into the marine environment;

"combined operation" means an operation carried out from an installation with another installation or installations for purposes related to the other installation(s) which thereby materially affects the risks to the safety of persons or the protection of the environment on any or all of the installations;

"commencement of operations" means the point in time when the installation or connected infrastructure is involved for the first time in the operations for which it is designed;

"company" means a limited liability company constituted in terms of the Companies Act, or a similar body corporate established or incorporated outside Malta;

"Competent Authority" means the Malta Environmental and Planning Authority (MEPA), as regulated by the provisions of the MEPA Act or any other such authority that the Prime Minister may create for this purpose;

"connected infrastructure" means, within the safety zone or within a nearby zone of a greater distance from the installation at the discretion of the Member State:

-
- (a) any well and associated structures, supplementary units and devices connected to the installation;
 - (b) any apparatus or works on or fixed to the main structure of the installation;
 - (c) any attached pipeline apparatus or works;

"continental shelf" has the same meaning as is assigned to it in Article 2 of the Continental Shelf Act;

"contractor" means any entity contracted by the operator or owner to perform specific tasks on behalf of the operator or owner;

"EMSA" means the European Maritime Safety Agency, in accordance with its mandate set out in Regulation (EC) No. 1406/2002;

"entity" means any natural or legal person or any group of such persons;

"exploration" means drilling into a prospect and all related offshore oil and gas operations necessary prior to production-related operations;

"external emergency response plan" means a local, national or regional strategy to prevent escalation or limit the consequences of a major accident relating to offshore oil and gas operations using all resources available to the operator as described in the relevant internal emergency response plan, and any supplementary resources made available by EU Member States;

"Garbage" means all kind of food, domestic and operational waste generated during the normal operation of the installation and liable to be disposed of continuously or periodically, except those substances which are defined or listed elsewhere in this Act;

"Gazette" means the Government Gazette published by the Government of Malta;

"harmful or noxious substances and materials" means substances and materials of any kind, form or description, which might cause pollution;

"independent verification" means an assessment and confirmation of the validity of particular written statements by an entity or an organisational part of the operator or the owner that is not under the control of or influenced by, the entity or the organisational part using those statements;

"industry" means entities that are directly involved in offshore oil and gas operations covered by this Act or whose activities are closely related to those operations;

"installation" means a stationary, fixed or mobile facility, or a combination of facilities permanently inter-connected by bridges or other structures, used for offshore oil and gas operations or in connection with such operations. Installations include mobile offshore drilling units only when they are stationed in offshore waters for drilling, production or other activities associated with offshore oil and gas operations;

"internal emergency response plan" means a plan prepared by the operator or owner pursuant to the requirements of this Act concerning the measures to prevent escalation or limit the consequences of a major accident relating to offshore oil and gas operations;

"licence" means an authorisation for offshore oil and gas operations pursuant to Directive 94/22/EC;

"licensed area" means the geographical area covered by the licence;

"licensee" means the holder or joint holders of a licence;

"licensing authority" means the public authority which is responsible for granting authorisations or for monitoring the use of authorisations as provided

for in Directive 94/22/EC;

"major accident" means, in relation to an installation or connected infrastructure:

(a) an incident involving an explosion, fire, loss of well control, or release of oil, gas or dangerous substances involving, or with a significant potential to cause, fatalities or serious personal injury;

(b) an incident leading to serious damage to the installation or connected infrastructure involving, or with a significant potential to cause, fatalities or serious personal injury;

(c) any other incident leading to fatalities or serious injury to five or more persons who are on the offshore installation where the source of danger occurs or who are engaged in an offshore oil and gas operation in connection with the installation or connected infrastructure; or

(d) any major environmental incident resulting from incidents referred to in sub-articles (a), (b) and (c).

For the purposes of determining whether an incident constitutes a major accident under sub-articles (a), (b) or (d), an installation that is normally unattended shall be treated as if it were attended;

"major environmental incident" means an incident which results, or is likely to result, in significant adverse effects on the environment in accordance with Directive 2004/35/EC;

"major hazard" means a situation with the potential to result in a major accident;

"Malta" shall have the same meaning as defined in Chapter 1 Article 1(2) of the Constitution of the Republic of Malta;

"Maritime Performance Officer" has the same meaning as is assigned to it in

Article 2 of the Territorial Waters and Contiguous Zone Act;

"material change" means:

(a) in the case of a report on major hazards, a change to the basis on which the original report was accepted including, inter alia, physical modifications, availability of new knowledge or technology and operational management changes;

(b) in the case of a notification of well operations or combined operations, a change to the basis on which the original notification was submitted including, inter alia, physical modifications, replacement of one installation with another, availability of new knowledge or technology and operational management changes;

"Member States" refers to Member States of the European Union;

"Minister" includes such Minister, public officer or authority as may be authorised by the Prime Minister from time to time for any of the purposes of this Act;

"natural resources" means:

(a) the mineral, energy and other non-living resources of the sea bed and subsoil; as well as

(b) the living organisms belonging to sedentary species;

"non-production installation" means an installation other than an installation used for production of oil and gas;

"offshore" means situated in the territorial sea, the Exclusive Economic Zone or the continental shelf within the meaning of the United Nations Convention on the Law of the Sea;

"offshore oil and gas operations" means all activities associated with an

installation or connected infrastructure, including design, planning, construction, operation and decommissioning thereof, relating to exploration and production of oil or gas, but excluding conveyance of oil and gas from one coast to another;

"Offshore Safety Directive" refers to Directive 2013/30/EU of the European Parliament and of the Council dated 12th June 2013 entitled 'On Safety of Offshore Oil and Gas Operations and Amending Directive 2004/35/EC;

"oil spill response effectiveness" means the effectiveness of spill response systems in responding to an oil spill, on the basis of an analysis of the frequency, duration, and timing of environmental conditions that would preclude a response. The assessment of oil spill response effectiveness is to be expressed as a percentage of time that such conditions are not present and is to include a description of the operating limitations placed on the installations concerned as a result of that assessment;

"operator" means the entity appointed by the licensee or licensing authority to conduct offshore oil and gas operations, including planning and executing a well operation or managing and controlling the functions of a production installation;

"owner" means an entity legally entitled to control the operation of a non-production installation;

"person" includes a body or association of persons, whether incorporated or otherwise.

"petroleum" means all natural hydrocarbons liquid or gaseous including crude oil, natural gas, asphalt, ozokerite and cognate substances and natural gasoline.

"production" means offshore extraction of oil and gas from the underground

strata of the licensed area including offshore processing of oil and gas and its conveyance through connected infrastructure;

"production installation" means an installation used for production;

"Prime Minister" shall mean the Prime Minister of Malta or any other person designated by the Prime Minister;

"relevant offence" has the same meaning as is assigned to it in Article 2 of the Territorial Waters and Contiguous Zone Act;

"risk" means the combination of the probability of an event and the consequences of that event;

"safety zone" means the area within a distance of 500 metres from any part of the installation, established by the Competent Authority;

"safety and environmental critical elements" means parts of an installation, including computer programmes, the purpose of which is to prevent or limit the consequences of a major accident, or the failure of which could cause or contribute substantially to a major accident;

"Sewage" means:

- (a) Drainage and other wastes from lavatories, urinals and water-closet scuppers,
- (b) Drainage from medical premises (dispensary, sick bay, etc) via wash basins, wash tubs and scuppers located in such premises,
- (c) Other waste waters when mixed with the drainages defined above;

"suitable" means right or fully appropriate, including consideration of proportionate effort and cost, for a given requirement or situation, based on objective evidence and demonstrated by an analysis, comparison with

appropriate standards or other solutions used in comparable situations by other authorities or industry;

"the public" means one or more entities and their associations, organisations or groups;

"tripartite consultation" means a formal arrangement to enable dialogue and cooperation between the Competent Authority, operators and owners, and workers' representatives;

"well operation" means any operation concerning a well that could result in the accidental release of materials that has the potential to lead to a major accident, including the drilling of a well, the repair or modification of a well, the suspension of well operations and the permanent abandonment of a well;

3. The interpretation of this Act shall take place in accordance with the provisions of the Interpretation Act.

PART I

OF HYDROCARBON EXPLOITATION AND REGULATION

4. (1) The property in any hydrocarbons in their natural condition in strata wheresoever existing in Malta is hereby vested in the Government of Malta and the right of exploration and exploitation shall be subject to a licence granted under the provisions of this Act. Vesting of Property in the Government of Malta

(a) Any person, who, without a licence granted under this Act explores for or exploits, under or from any lands in Malta shall be guilty by reason merely of having done so and without prejudice to prosecution under any other provision of law, of an offence and shall be liable on conviction to a fine (*multa*) of not less than one hundred and fifty thousand euro (€150,000) but not exceeding two

hundred and fifty thousand euro (€250,000) for each day during which the offence continues, which fine (*multa*) shall also be applicable for the purposes of Article 377(3) of the Criminal Code and in addition all natural resources so gotten shall be forfeited to the Government of Malta.

(b) The prohibitions imposed by or under this Act and the rights by and under this Act vested in the Government of Malta, in the Minister, in any officer of the Government, and in any holder of a licence under this Act shall have full effect notwithstanding the provisions contained in Article 323 of the Civil Code or in any law which may be incompatible with such prohibitions and rights:

Provided that nothing in this Act shall be construed as conferring, or as enabling the Minister to confer, on any person, whether acting on behalf of the Government of Malta or not, any right which he does not enjoy apart from this Act.

(2) The Prime Minister may from time to time by order published in the Gazette designate any area as an area within which the rights mentioned in sub-article (1) are exercisable, and any area so designated in this Act shall be a designated area.

5. The power of the Prime Minister to make regulations following due consultation shall be the same as those stipulated in Article 4 of the Continental Shelf Act. Powers of the Prime Minister
6. (1) The Minister shall have the power to grant to the successful applicant, a licence to explore and exploit hydrocarbons, not limited to petroleum or gas on, under or from any lands in Malta. Powers of the Minister

Any such licence shall be granted for such consideration (by way of royalty and/or otherwise) as the Minister may determine, and over such areas, for such periods and upon such other terms and conditions as may be stipulated in the call for applications.

(2) Without prejudice to the generality of the last preceding subsection, the terms and conditions of any such licence may in particular include provision for the following matters:

- (i) the rates of royalties to be paid in respect of any hydrocarbons won in the exercise of the rights conferred by the licence, the method of calculation of the amount of such royalties and the manner of payment thereof;
- (ii) the surface rents to be charged in respect of the areas of the licence;
- (iii) the working obligations attaching to the licence;
- (iv) the division between the Government of Malta and the licensee of profits derived from the sale or disposal of hydrocarbons won in the exercise of the rights conferred by the licence;
- (v) the supply from time to time of information by way of returns, reports, notices, records of operations or otherwise;
- (vi) such other terms and conditions as may be specified in the call for applications.

(3) The Minister shall as soon as may be after granting a licence under this section, cause a notice of the fact to be published in the Government Gazette, and in any such other manner as may be required under international obligations entered into by the Government, stating the name of the licensee and the situation of the area in respect of which the licence has been granted.

(4) The public call for applications referred to in this article shall be published in the Government Gazette and in any such other manner as may be prescribed, at least ninety days prior to the closing date for such applications.

(5) The issue of the call for applications and the granting of a licence under this article shall also be subject to the following criteria:

(a) the technical and financial capability of an applicant, including any financial security, to cover liabilities potentially deriving from the offshore oil and gas operations in question including liability for potential economic damages where such liability is provided for by national law;

(b) the manner in which an applicant proposes to prospect, explore or to bring into production the geographical area which is the subject of the call for applications and the risk, the hazards and any other relevant information relating to the licensed area concerned, including, where appropriate, the cost of degradation of the marine environment referred to in Article 8(1)(c) of Directive 2008/56/EC;

(c) economic and financial considerations.

(d) the available information relating to the safety and environmental performance of the applicant, including in relation to major accidents, as may be appropriate to the operations for which the licence was requested.

(6) The Competent Authority shall assess the adequacy of these criteria in order to establish whether the applicant has sufficient resources to fulfil his obligations. The Competent Authority shall also provide sustainable financial instruments and other arrangements to assist applicants to demonstrate their financial capacity.

(7) When assessing the technical and financial capabilities of an applicant for a licence, special attention shall be paid to any environmentally sensitive marine and coastal environments, in particular ecosystems which play an important role in mitigation and adaptation to climate change, such as salt marshes and sea grass beds, and marine protected areas, such as special areas of conservation pursuant to the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, special protection areas pursuant to the Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, and marine protected areas as agreed by the European Union or Malta within the framework

of any international or regional agreements to which they are a party.

(8) In case where two or more applications have equal merit, other relevant criteria and non-discriminatory criteria may be taken into consideration. The Competent Authority may also take account, when appraising applications, of any lack of efficiency and responsibility displayed by the applicants in authorisations under previous authorisations.

(9) These criteria shall be published in the Gazette and the Official Journal of the European Union before the start of the period of submissions of applications. All changes to such conditions have to be published in full.

(10) The issue of a public call for applications and the granting of a licence under this Act shall comply with any provision of law regulating procurement and competition rules which may from time to time be in force.

Subject to the provisions of this Act and to any international obligation entered into by Government, the Minister may make regulations generally for regulating the exploration, prospecting for hydrocarbons in Malta, including the drilling for and production of petroleum and the conservation of the petroleum resources of Malta, and for carrying out any of the provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, such regulations may prescribe:

- (a) the manner in which and the persons by whom applications for licences under this Act may be made;
- (b) the fees to be paid on any such application;
- (c) the conditions as to the size and shape of areas in respect of which licences may be granted;
- (d) model clauses which shall, unless the Minister thinks fit to modify or exclude in any particular case, be incorporated in any such licence,
- (e) anything which is required or may be prescribed under this Act, and may

provide for establishing the penalties for the breach of any of their provisions, which penalties may include a fine (*multa* or *ammenda*) not exceeding two hundred and fifty thousand euro (€250,000) or in the case of a continuing offence not exceeding one hundred thousand euro (€100,000) for each day during which the offence continues; and different regulations may be made for different kinds of licence. Any penalty established by the regulations in respect of a continuing offence shall be applicable also for the purposes of Article 377(3) of the Criminal Code.

(11) The Minister shall take the necessary measures to ensure that:

(a) if the geographical area is not delimited in the basis of geometric divisions, the extent of each area is determined in such a way that it does not exceed the area justified by an economic and technical point of view. Objective criteria shall be established prior to the submission of applications.

(b) the duration of an authorisation shall not exceed the period necessary to carry out the activities for which the authorisation is granted. The Competent Authority may prolong the authorisation when the duration is deemed to be insufficient.

(c) entities and companies do not retain exclusive rights in the geographical area for which they have received authorisation for longer than is necessary for the proper performance of the authorised activities.

7. (1) Any company may apply in accordance with this Act for -

Licensing

(a) a production licence; or

(b) an exploration licence.

(2) A production licence may also provide for the rights to search for petroleum and other hydrocarbons.

(3) An application for either type of licence shall be made in writing in the form set out in the Schedule or in a form substantially to the like effect addressed to

the Minister and shall be accompanied by the appropriate fee and by such information and by such evidence in support thereof as is referred to in Schedule A and is appropriate to that application.

(4) If any of the matters stated in an application shall change after the application is made but before a licence is granted or the Minister informs the applicant that the application is refused, the applicant shall forthwith give notice in writing to the Minister giving particulars of the change.

(5) All information comprised in or furnished to the Minister in pursuance of an application for a licence shall be treated as confidential.

(6) Every application for a production licence pursuant to these regulations shall be:

(a) in respect of one or more blocks or areas described or specified by a notice published in accordance with sub-article (7);

(b) lodged not earlier than or later than the dates specified by such a notice as the dates after and before which respectively the Minister is prepared to receive applications in respect of the blocks or areas so specified.

(7) The notice referred to in sub-article (6)(a) is a notice published from time to time by the Minister in the Gazette and in any such other manner as may be required under international obligations entered into by the Government, describing or specifying by reference to a map deposited at the Office of the Minister and at such other places (if any) as may be specified in the notice, areas (in this Act referred to as "blocks" or "areas") to which reference numbers or letters shall be assigned, in respect of which he is prepared to receive applications for production licences and specifying the dates within which applications in respect of the blocks or areas so specified are to be made.

(8) An application for an exploration licence may be made in respect of the

whole or any part of Malta and the continental shelf, but so that the rights conferred by any exploration licence which is granted shall not be exercisable in any area in respect of which a licence granted by the Minister is for the time being in force.

(9) Nothing in this regulation shall prevent more than one application being made by the same company or more than one licence being granted to it. The documentation that has to be submitted to the Competent Authority is listed in Article 11 of the Offshore Safety Directive and Annex I of this Act.

(10) Whenever an area is made available for the exercise of the activities mentioned in sub-articles (6), (7), (8) and (9), it shall be ensured that there is no discrimination between entities and companies with respect to access and exercise of these activities.

(11) The Minister may refuse, following due consultation, on the ground of security, to allow access to and exercise of these activities to any entity or company effectively controlled by third countries or third party nationals. The Minister may also refuse applications which do not conform to the requirements of the public call or which may endanger Malta's economical and ecological heritage.

(12) The Competent Authority shall ensure that the no license is granted unless it is satisfied with evidence from the applicant that the applicant has made or will make adequate provision, on the basis of arrangements to be decided according to national law, to cover liabilities potentially deriving from the applicant's offshore oil and gas operations. Such provision shall be valid and effective from the start of offshore oil and gas operations. The Competent Authority shall require applicants to provide, in an appropriate manner, evidence of technical and financial capacity and any other relevant information relating to the area covered by the licence and the particular stage of offshore

oil and gas operations.

(13) The Competent Authority shall ensure that production installations and connected infrastructure are operated only in licensed areas and only by operators appointed for that purpose.

(14) Throughout all offshore oil and gas operations, the Competent Authority shall require the licensee to take all reasonable steps to ensure that the operator meets the requirements, carries out its functions and discharges its duties under this Act.

(15) Where the Competent Authority determines that the operator no longer has the capacity to meet the relevant requirements under this Act, the Competent Authority shall then notify the licensee thereof and the licensee shall assume responsibility for the discharge of the duties concerned and shall, without delay, propose a replacement operator to the Competent Authority.

(16) The Competent Authority shall ensure that operations relating to production and non-production installations are not commenced or continued until the report on major hazards has been accepted by the Competent Authority in accordance with this Act. Offshore operations may not commence prior to the fulfilment stipulated in this Act, in accordance with the relevant provisions of the Offshore Safety Directive.

(17) The procedure to be followed with regard to the report on major hazards is laid down in Article 12 of the Offshore Safety Directive.

(18) The Competent Authority shall establish a mechanism for effective participation in tripartite consultation between the competent authority, operators and owners, and worker representatives in the formulation of standards and policies dealing with major accident prevention.

8. (1) The Minister shall ensure that authorisation is granted following pre- Authorisation established procedures in which all interested entities may submit applications to obtain an exploration or exploration license as set out in Article 7.

(2) This procedure shall be initiated:

(a) On the initiative of the Malta Environmental and Planning Authority by means of a notice published in the Gazette and in the Official Journal of the European Union at least 90 days before the closing dates for applications; or

(b) By means of a notice inviting applications to be published in the Official Journal of the European Union following the submission of an applicant without prejudice to the provisions stipulated in Article 3(1) of Directive 94/22/EC. Other interested parties shall have a period of 90 days after the date of publication to submit an application.

(3) The Notices shall specify the type of authorisation or licenses as laid down in Article 7(1), the geographical area or areas in part or all of which an application has been or may be made and the proposed date or time limit for granting authorisation.

(4) The Minister may grant authorisations without issuing the procedure stipulated in Article 8(2) where the area for which authorisation is:

(a) available on a permanent basis; or

(b) has been the subject of a previous procedure in accordance with Article 8(2) which has not resulted in the grant of an authorisation; or

(c) has been relinquished by an entity and does not fall automatically under the remit of Article 8(4)(b).

(5) The following shall not be considered as the grant of an authorisation within the meaning of Article 8(2):

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- (a) the grant of an authorisation solely by reason of a change in name or ownership in an entity or company holding an existing authorisation, a change in composition of such an entity or a transfer of authorisation;
- (b) the grant of an authorisation to an entry having another form of authorisation where the possession of the latter authorisation implies a right to the grant of the former authorisation;
- (c) the decision of the competent authorities taken within the framework of an authorisation (whether or not such authorisation was granted before 1995) and relating to the commencement, interruption, promulgation or cessation of the activities or the prolongation of an authorisation.
- 9.** (1) With every application for a production licence there shall be paid a fee of twelve thousand euros (€12,000). Fees
- (2) With every application for an exploration licence there shall be paid a fee of two thousand and five hundred euros (€2,500).
- 10.** The Minister shall, after the grant, surrender, determination or assignment of a licence made pursuant to the Petroleum (Production) Act or pursuant to that Act and to that Act as applied by the Continental Shelf Act or to these regulations or to any licence granted thereunder, publish notice of the fact in the Gazette and in any such other manner as may be required under international obligations entered into by the Government, giving particulars thereof. Publication of Notice
- 11.** Every production licence and every exploration licence shall incorporate the model clauses respectively set out in the Model Production Sharing Contract (2001) and the Model Exploration Study Agreement (2001) and other terms and conditions as may be specified in the call for applications or as may be agreed to by the Minister and licensee in any particular case. Copies of the model clauses may be obtained on application from the Oil Exploration Department at the Office of the Prime Minister. Model Clauses

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- 12.** (1) The Competent Authority shall be responsible for the following functions: The Competent Authority
- (a) assessing and accepting reports on major hazards, assessing design notifications, and assessing notifications of well operations or combined operations, and other similar documents that are submitted to it;
 - (b) overseeing compliance by operators and owners with this Act, including inspections, investigations and enforcement actions;
 - (c) advising other authorities or bodies, including the licensing authority;
 - (d) making annual plans pursuant to Article 36;
 - (e) producing reports;
- (2) The Operations of the Competent Authority shall be regulated in accordance with Annex III of this Act.
- (3) Moreover, the Competent Authority shall:
- (a) prohibit the operation or commencement of operations on any installation or any connected infrastructure where the measures proposed in the report on major hazards for the prevention or limiting the consequences of major accidents or notifications of well operations or combined operations submitted pursuant to points (h) or (i) of Article 13(B)(1) respectively are considered insufficient to fulfil the requirements set out in this Act;
 - (b) shorten the time interval required between the submission of the report on major hazards or other documents to be submitted pursuant to Article 13B and the commencement of operations in exceptional situations and where it considers that safety and environmental protection are not compromised;
 - (c) require the operator to take such proportionate measures as the Competent Authority considers necessary to ensure compliance with Article 13A(1);
 - (d) where Article 7(15) applies, takes adequate measures to ensure the continuing safety of operations;
 - (e) be empowered to require improvements and, if necessary, prohibit the

continued operation of any installation or any part thereof or any connected infrastructure where it is shown by the outcome of an inspection, a determination pursuant to Article 7(15), a periodic review of the report on major hazards submitted pursuant to Article 13B(1)(e) or by changes to notifications submitted pursuant to Article 13B, that the requirements of this Act are not being fulfilled or there are reasonable concerns about the safety of offshore oil and gas operations or installations.

PART II
OF SAFETY ON OFFSHORE STRUCTURES

13A. (1) The Competent Authority shall ensure that:

General
Provisions

(a) all suitable measures are taken to prevent major accidents in offshore structures;

(b) ensure that all Operators take suitable measures to limit the impact of major accidents on human health and the environment.

(2) Operators shall not be deemed to be relieved from responsibility should the events leading to the accident be carried out by a Contractor.

(3) The Competent Authority shall require Operators to ensure that operations are carried out on the basis of systematic risk management so that the residual risks of major accidents to persons, the environment and offshore installations are acceptable.

13B. (1) The Competent Authority shall ensure that the operator or the owner shall submit to the Competent Authority the following documents:

Documentation
Required to Carry
out Offshore
Operations

(a) the corporate major accident prevention policy or an adequate description

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- thereof, in accordance with Article 18(1) and (5);
- (b) the safety and environmental management system applicable to the installation, or an adequate description thereof, in accordance with Article 18(3) and (5);
 - (c) in the case of a planned production installation, a design notification in accordance with the requirements of Annex I, Article 1;
 - (d) a description of the scheme of independent verification in accordance with Article 31;
 - (e) a report on major hazards, in accordance with Articles 15A and B;
 - (f) in the event of a material change or dismantling of an installation, an amended report on major hazards in accordance with Articles 15A and B;
 - (g) the internal emergency response plan or an adequate description thereof, in accordance with Article 17;
 - (h) in the case of a well operation, a notification of that well operation and information on that well operation in accordance with Articles 15A and B;
 - (i) in the case of a combined operation, a notification of combined operations in accordance with Article 30;
 - (j) in the case of an existing production installation which is to be moved to a new production location where it is to be operated, a relocation notification in accordance with Annex I, Article 1;
 - (k) any other relevant document requested by the Competent Authority.
- (2) The documents to be submitted under sub-articles (a), (b), (d) and (g) of sub-article 1 shall be included with the report on major hazards required under sub-article 1(e). The corporate major accident prevention policy of an operator of a well shall, where not previously submitted, be included with the notification of well operations to be submitted under sub-article 1(h).
- (3) The design notification required pursuant to sub-article 1(c) shall be submitted to the competent authority by a deadline set by the competent authority before the intended submission of the report on major hazards for the

planned operation. The competent authority shall respond to the design notification with comments to be taken into account in the report on major hazards.

(4) Where an existing production installation is to enter or leave the offshore waters of Malta, the operator shall notify the competent authority in writing prior to the date on which the production installation is due to enter or leave the offshore waters.

(5) The relocation notification required pursuant to sub-article 1(j) shall be submitted to the competent authority at a stage that is sufficiently early in the proposed development to enable the operator to take into account any matters raised by the Competent Authority during the preparation of the report on major hazards.

(6) Where there is a material change affecting the design notification or the relocation notification prior to the submission of the report on major hazards, the Competent Authority shall be notified of that change as soon as possible.

(7) The report on major hazards required pursuant to sub-article 1(e) shall be submitted to the competent authority by a deadline set by the Competent Authority that is before the planned commencement of the operations.

- 14.** (1) The Competent Authority shall ensure that a safety zone is established around an installation and that vessels are prohibited from entering or remaining in that safety zone. However, that prohibition shall not apply to a vessel entering or remaining in the safety zone: The Safety Zone
- (a) in connection with the laying, inspection, testing, repair, maintenance, alteration, renewal or removal of any submarine cable or pipeline in or near that safety zone;
- (b) to provide services for or to transport persons or goods to or from any

installation in that safety zone;

(c) to inspect any installation or connected infrastructure in that safety zone under the authority of the Competent Authority;

(d) in connection with saving or attempting to save life or property;

(e) owing to stress of weather;

(f) when in distress; or

(g) if there is consent from the operator, owner or the Competent Authority in which the safety zone is located.

- 15A.** (1) The Competent Authority shall ensure that the operator prepares a report on major hazards for a production installation, to be submitted pursuant to Article 13B(1)(e). That report shall contain the information specified in Annex I, Articles 2 and 5 and shall be updated whenever appropriate or when so required by the Competent Authority.
- Report on
Major Hazards
for a Production
Installation
- (2) The Competent Authority shall ensure that workers' representatives are consulted at the relevant stages in the preparation of the report on major hazards for a production installation, and that evidence is provided to this effect in accordance with Annex I, Article 2, sub-article 3.
- (3) The report on major hazards for a production installation may be prepared in relation to a group of installations, subject to the agreement of the Competent Authority.
- (4) Where further information is necessary before a report on major hazards can be accepted, the Competent Authority shall ensure that the operator provides, at the request of the competent authority, such information and makes any necessary changes to the submitted report on major hazards.
- (5) Where modifications are to be made to the production installation that entail a material change, or it is intended to dismantle a fixed production installation,

the operator shall prepare an amended report on major hazards, to be submitted pursuant Article 13B(1)(f) by a deadline specified by the Competent Authority, in accordance with Annex I, Article 6.

(6) The Competent Authority shall ensure that the planned modifications are not brought into use nor any dismantlement commenced until the Competent Authority has accepted the amended report on major hazards for the production installation.

(7) The report on major hazards for a production installation shall be subject to a thorough periodic review by the operator at least every five years or earlier when so required by the competent authority. The results of the review shall be notified to the competent authority.

15B. (1) The Competent Authority shall ensure that the owner prepares a report on major hazards for a non-production installation. That report shall contain the information specified in Annex I, Articles 3 and 5 and shall be updated whenever appropriate or when so required by the Competent Authority.

Reports on Major Hazards for a Non-Production Installation

(2) The Competent Authority shall ensure that workers' representatives are consulted at the relevant stages in the preparation of the report on major hazards for a non-production installation, and that evidence is provided to this effect in accordance with Annex I, Article 3, sub-article 2.

(3) Where further information is necessary before a report on major hazards for a non-production installation can be accepted, the Competent Authority shall require the owner to provide such information and to make any necessary changes to the submitted report on major hazards.

(4) Where modifications are to be made to the non-production installation that entail a material change, or it is intended to dismantle a fixed non-production installation, the owner shall prepare an amended report on major hazards, to be

submitted pursuant to Article 13B(1)(f) by a deadline specified by the Competent Authority, in accordance with Annex I, Article 6, sub-articles 1, 2 and 3.

(5) For a fixed non-production installation, the Competent Authority shall ensure that the planned modifications are not brought into use nor any dismantlement commenced until the Competent Authority has accepted the amended report on major hazards for the fixed non-production installation.

(6) For a mobile non-production installation, the Competent Authority shall ensure that the planned modifications are not brought into use until the Competent Authority has accepted the amended report on major hazards for the mobile non-production installation.

(7) The report on major hazards for a non-production installation shall be subject to a thorough periodic review by the owner at least every five years or earlier when so required by the Competent Authority. The results of the review shall be notified to the Competent Authority.

16. (1) The Competent Authority shall initiate thorough investigations of major accidents occurring in their jurisdiction, the results of which shall be submitted to the European Commission. Investigations

(2) The Competent Authority shall make a non-confidential version of the findings publicly available.

(3) The Minister shall ensure that, following the investigations pursuant to sub-article 1, the Competent Authority implements any recommendations of the investigation that are within its powers to act.

17. (1) The Competent Authority shall ensure that operators or owners, as appropriate, prepare internal emergency response plans to be submitted. The plans shall be prepared in accordance with Article 19 taking into account the Internal Emergency Response Plans

major accident risk assessment undertaken during preparation of the most recent report on major hazards. The plan shall include an analysis of the oil spill response effectiveness.

(2) In the event that a mobile non-production installation is to be used for carrying out well operations, the internal emergency response plan for the installation shall take into account the risk assessment undertaken during the preparation of the notification of well operations to be submitted pursuant to Article 13B(1)(h). Where the internal emergency response plan has to be amended due to the particular nature or location of the well, the Competent Authority shall ensure that the operator of the well submits the amended internal emergency response plan, or an adequate description thereof, to the Competent Authority to complement the relevant notification of well operations.

(3) In the event that a non-production installation is to be used for carrying out combined operations, the internal emergency response plan shall be amended to cover the combined operations and shall be submitted to the Competent Authority to complement the relevant notification of the combined operations.

- 18.** (1) The Competent Authority shall require operators and owners to prepare a document setting out their corporate major accident prevention policy which is to be submitted pursuant to Article 13B(1)(a), and to ensure that it is implemented throughout their offshore oil and gas operations, including by setting up appropriate monitoring arrangements to assure effectiveness of the policy. The document shall contain the information specified in Annex I, Article 8.

Major Accident
Prevention by Owners
and Operators

(2) The corporate major accident prevention policy shall take account of the operators' primary responsibility for, inter alia, the control of risks of a major accident that are a result of its operations and for continuously improving

control of those risks so as to ensure a high level of protection at all times.

(3) The Competent Authority shall ensure that operators and owners prepare a document setting out their safety and environmental management system which is to be submitted pursuant to Article 13B(1)(b). That document shall include a description of the:

- (a) organisational arrangements for control of major hazards;
- (b) arrangements for preparing and submitting reports on major hazards, and other documents as appropriate, pursuant to this Act; and
- (c) schemes for independent verification established pursuant to Article 31.

(4) The Competent Authority shall create opportunities for operators and owners to contribute to mechanisms for effective tripartite consultation established pursuant to Article 7(18). When appropriate, an operator's and owner's commitment to such mechanisms may be outlined in the corporate major accident prevention policy.

(5) The corporate major accident prevention policy and the safety and environmental management systems shall be prepared in accordance with Annex I, Articles 8 and 9 and Annex IV. The following conditions shall apply:

- (a) the corporate major accident prevention policy shall be in writing and shall establish the overall aims and arrangements for controlling the risk of a major accident, and how those aims are to be achieved and arrangements put into effect at corporate level;
- (b) the safety and environmental management system shall be integrated within the overall management system of the operator or owner and shall include organisational structure, responsibilities, practices, procedures, processes and resources for determining and implementing the corporate major accident prevention policy.

(6) The Competent Authority shall ensure that operators and owners prepare and maintain a complete inventory of emergency response equipment pertinent to their offshore oil and gas operation.

(7) The Competent Authority shall ensure that operators and, owners in consultation with the Competent Authority and making use of the exchanges of knowledge, information and experience provided for in Article 35, prepare and revise standards and guidance on best practice in relation to the control of major hazards throughout the design and operational lifecycle of offshore oil and gas operations, and that as a minimum they follow the outline in Annex VI.

(8) The Competent Authority shall require operators and owners to ensure that their corporate major accident prevention policy document referred to in sub-article 1 also covers their production and non-production installations outside of the European Union.

(9) Where an activity carried out by an operator or an owner poses an immediate danger to human health or significantly increases the risk of a major accident, the Competent Authority shall ensure that the operator or the owner takes suitable measures which may include, if deemed necessary, suspending the relevant activity until the danger or risk is adequately controlled. The Competent Authority shall ensure that where such measures are taken, the operator or the owner notifies the Competent Authority accordingly without delay and no later than 24 hours after taking those measures.

(10) The Competent Authority shall ensure that, where appropriate, operators and owners take suitable measures to use suitable technical means or procedures in order to promote the reliability of the collection and recording of relevant data and to prevent possible manipulation thereof.

- 19.** (1) The Competent Authority shall ensure that the internal emergency response plans to be prepared by the operator or the owner in accordance with Article 17

Internal Emergency
Preparedness
and Response

and submitted pursuant to Article 13B(1)(g) are:

(a) put into action without delay to respond to any major accident or a situation where there is an immediate risk of a major accident; and

(b) consistent with the external emergency response plan referred to in Article 20.

(2) The Competent Authority shall ensure that the operator and the owner maintain equipment and expertise relevant to the internal emergency response plan in order for that equipment and expertise to be available at all times and to be made available as necessary to the authorities responsible for the execution of the external emergency response plan of the Competent Authority where the internal emergency response plan applies.

(3) The internal emergency response plan shall be prepared in accordance with Annex I, Article 10, and updated as a consequence of any material change to the report on major hazards or notifications submitted pursuant to Article 13B. Any such updates shall be submitted to the Competent Authority pursuant to Article 13B(1)(g) and notified to the relevant authority or authorities responsible for preparing the external emergency response plans for the area concerned.

(4) The internal emergency response plan shall be integrated with other measures relating to protection and rescue of personnel from the stricken installation so as to secure a good prospect of personal safety and survival.

20. (1) The Competent Authority shall prepare external emergency response plans covering all offshore oil and gas installations or connected infrastructure and potentially affected areas within their jurisdiction. The Competent Authority shall specify the role and financial obligation of licensees and operators in the external emergency response plans.

External Emergency
Response Plan and
Preparedness

(2) External emergency response plans shall be prepared by the Competent

Authority in cooperation with relevant operators and owners and, as appropriate, licensees and the Competent Authority, and shall take into account the most up to date version of the internal emergency response plans of the existing or planned installations or connected infrastructure in the area covered by the external emergency response plan.

(3) External emergency response plans shall be prepared in accordance with Annex VII, and shall be made available to the Commission, other potentially affected Member States of the European Union and the public. When making available their external emergency response plans, the Competent Authority shall ensure that disclosed information does not pose risks to the safety and security of offshore oil and gas installations and their operation and does not harm the economic interests of other Member States or the personal safety and well-being of officials of such Member States.

(4) The Competent Authority shall take suitable measures to achieve a high level of compatibility and interoperability of response equipment and expertise between all Member States in a geographical region, and further afield where appropriate. The Competent Authority shall encourage industry to develop response equipment and contracted services that are compatible and interoperable throughout the geographical region.

(5) The Competent Authority shall keep records of emergency response equipment and services in accordance with Annex VIII, sub-article 1. Those records shall be available to the other potentially affected Member States and the Commission and, on a reciprocal basis, to neighbouring third countries.

(6) The Competent Authority shall ensure that operators and owners regularly test their preparedness to respond effectively to major accidents in close cooperation with the relevant authorities of the Member States.

(7) The Competent Authority must establish contact points develop cooperation

scenarios for emergencies. Such scenarios shall be regularly assessed and updated as necessary.

- 21.** (1) The Competent Authority shall ensure that the operator or, if appropriate, the owner notifies without delay the relevant authorities of a major accident or of a situation where there is an immediate risk of a major accident. That notification shall describe the circumstances, including, where possible, the origin, the potential impacts on the environment and the potential major consequences.

Emergency
Response

(2) The Competent Authority shall ensure that in the event of a major accident, the operator or the owner takes all suitable measures to prevent its escalation and to limit its consequences. The relevant authorities may assist the operator or owner, including with the supply of additional resources.

(3) In the course of the emergency response, the Competent Authority shall collect the information necessary for thorough investigation.

- 22.** (1) The Competent Authority shall ensure that operators and owners comply with the measures established in the report on major hazards and in the plans referred to in the notification of well operations and notification of combined operations, submitted pursuant to sub-articles (e), (h) and (i) of Article 13B(1) respectively.

Securing Compliance
with the Regulatory
Framework

(2) The Competent Authority shall ensure that operators and owners provide the Competent Authority, or any other persons acting under the direction of the Competent Authority, with transport to or from an installation or vessel associated with oil and gas operations, including the conveyance of their equipment, at any reasonable time, and with accommodation, meals and other subsistence in connection with the visits to the installations, for the purpose of facilitating Competent Authority oversight, including inspections, investigations and enforcement of compliance with this Act.

(3) The Competent Authority shall ensure that the Competent Authority develops annual plans for effective oversight, including inspections, of major hazards based on risk management and with particular regard to compliance with the report on major hazards and other documents submitted pursuant to Article 13B. The effectiveness of the plans shall be regularly reviewed and the Competent Authority shall take any necessary measures to improve them.

- 23.** (1) The use and storage of chemicals for the activities shall be approved by the Competent Authority, on the basis of the Chemical Use Plan. Harmful and Noxious Substances And Materials
- (2) The Competent Authority may regulate, limit or prohibit the use of chemicals for the activities.
- (3) For the purpose of protecting the environment, the Competent Authority shall ensure that each substance and material used for activities is accompanied by a compound description provided by the entity producing such substance or material.
- (4) The disposal of harmful or noxious substances and materials resulting from the activities covered by this Act and listed in Annex X to this Act is prohibited.
- (5) The disposal of harmful or noxious substances and materials resulting from the activities covered by this Act and listed in Annex XI to this Act requires, in each case, a prior special permit from the Competent Authority.
- (6) The disposal of all other harmful or noxious substances and materials resulting from the activities covered by this Act and which might cause pollution requires a prior general permit from the Competent Authority.
- (7) The permits referred to in sub-articles (5) and (6) above shall be issued only after careful consideration of all the factors set forth in Annex XII to this Protocol.

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- 24.** (1) The Competent Authority shall formulate and adopt common standards for the disposal of oil and oily mixtures from installations: Oil and Oily Mixtures
and Drilling Fluids
and Cuttings
- (a) Such common standards shall be formulated in accordance with the provisions of Annex XIII;
- (b) Such common standards shall not be less restrictive than the following, in particular:
- (i) For machinery space drainage, a maximum oil content of 15 mg per litre whilst undiluted;
- (ii) For production water, a maximum oil content of 40 mg per litre as an average in any calendar month; the content shall not at any time exceed 100 mg per litre;
- (c) The Competent Authority shall determine by common agreement which method will be used to analyze the oil content.
- (3) The Competent Authority shall take appropriate measures to enforce the common standards adopted pursuant to this Article or to enforce more restrictive standards that it may have adopted.
- 25.** (1) The Competent Authority shall prohibit the discharge of sewage from installations permanently manned by 10 or more persons in cases where: Sewage
- (a) The installation is discharging sewage after treatment is approved by the Competent Authority at a distance of at least four nautical miles from the nearest land or fixed fisheries installation, leaving to the Competent Authority to decide on a case-by-case basis; or
- (b) The sewage is not treated, but the discharge is carried out in accordance with international rules and standards; or
- (c) The sewage has passed through an approved sewage treatment plant certified by the Competent Authority;
- (2) The exceptions referred to in sub-article (1) shall not apply if the discharge

produces visible floating solids or produces colouration, discolouration or opacity in the surrounding water.

(3) If the sewage is mixed with wastes and harmful or noxious substances and materials having different disposal requirements, the more stringent requirements shall apply;

26. (1) The Competent Authority shall prohibit the disposal of the following Garbage products and materials:

(a) All plastics, including but not limited to synthetic ropes, synthetic fishing nets and plastic garbage bags;

(b) All other non-biodegradable garbage, including paper products, rags, glass, metal, bottles, crockery, dunnage, lining and packing materials.

(2) Disposal of food waste shall take place as far away as possible from land, in accordance with international rules and standards.

(3) If garbage is mixed with other discharges having different disposal or discharge requirements, the more stringent regulations shall apply.

PART III

GENERAL PROVISIONS

27. Without prejudice to the existing scope of liability relating to the prevention and remediation of environmental damage pursuant to Directive 2004/35/EC, the Competent Authority shall ensure that the licensee is financially liable for the prevention and remediation of environmental damage as defined in that Directive, caused by offshore oil and gas operations carried out by, or on behalf of, the licensee or the operator. Criminal and Civil Liability

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- 28.** Any licenses or permits issued prior to the promulgation of the Continental Shelf Act, 2014 shall be regulated in the way established by Article 9 of the said Act. Issue of Permits prior to 2014
- 29.** (1) The Competent Authority shall ensure that the operator of a well prepares the notification to be submitted pursuant to Article 13B(1)(h). It shall be submitted by a deadline set by the Competent Authority that is before the commencement of the well operation. That notification of well operations shall contain details of the design of the well and the proposed well operations in accordance with Annex I, Article 4. This shall include an analysis of the oil spill response effectiveness. Well Operations
- (2) The Competent Authority shall consider the notification and, if deemed necessary, take appropriate action before the well operations are commenced, which may include prohibiting the operation from being commenced.
- (3) The Competent Authority shall ensure that the operator of the well involves the independent verifier in planning and preparation of a material change to the submitted notification of well operations pursuant to Article 31(4)(b) and that it immediately informs the Competent Authority of any material change to the submitted notification of well operations. The Competent Authority shall consider those changes and, if deemed necessary, take appropriate action.
- (4) The Competent Authority shall ensure that the operator of the well submits reports of well operations to the Competent Authority in accordance with the requirements of Annex II. The reports shall be submitted at weekly intervals, starting on the day of commencement of the well operations, or at intervals specified by the Competent Authority.

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- 30.** (1) The Competent Authority shall ensure that operators and owners involved in a combined operation jointly prepare the notification to be submitted pursuant to Article 13B(1)(i). The notification shall contain the information specified in Annex I, Article 7. Member States shall ensure that one of the operators concerned submits the notification of combined operations to the Competent Authority. The notification shall be submitted by a deadline set by the Competent Authority before combined operations are commenced. Notification of
Combined
Operations
- (2) The Competent Authority shall consider the notification and, if deemed necessary, take appropriate action before the combined operations are commenced, which may include prohibiting the operation from being commenced.
- (3) The Competent Authority shall ensure that the operator who submitted the notification informs, without delay, the Competent Authority of any material change to the submitted notification. The Competent Authority shall consider those changes and, if deemed necessary, take appropriate action.
- 31.** (1) The Competent Authority shall ensure that operators and owners establish schemes for independent verification and that they prepare a description of such schemes, to be submitted pursuant to Article 13B(1)(d) and included within the safety and environmental management system submitted pursuant to Article 13B(1)(b). The description shall contain the information specified in Annex I, Article 5. Independent
Verifications
- (2) The results of the independent verification shall be without prejudice to the responsibility of the operator or the owner for the correct and safe functioning of the equipment and systems under verification.
- (3) The selection of the independent verifier and the design of schemes for independent verification shall meet the criteria of Annex V.

(4) The schemes for independent verification shall be established:

(a) in respect of installations, to give independent assurance that the safety and environmental critical elements identified in the risk assessment for the installation, as described in the report on major hazards, are suitable and that the schedule of examination and testing of the safety and environmental critical elements is suitable, up-to-date and operating as intended;

(b) in respect of notifications of well operations, to give independent assurance that the well design and well control measures are suitable for the anticipated well conditions at all times.

(5) The Competent Authority shall ensure that operators and owners respond to and take appropriate action based on the advice of the independent verifier.

(6) The Competent Authority shall require operators and owners to ensure that advice received from the independent verifier pursuant to sub-article 4(a) and records of action taken on the basis of such advice are made available to the Competent Authority and retained by the operator or the owner for a period of six months after completion of the offshore oil and gas operations to which they relate.

(7) The Competent Authority shall require operators of wells to ensure that the findings and comments of the independent verifier pursuant to sub-article 4(b) of this Article and their actions in response to those findings and comments are presented in the notification of well operations prepared in accordance with Article 29.

(8) For a production installation, the verification scheme shall be in place prior to the completion of the design. For a non-production installation, the scheme shall be in place prior to the commencement of operations in the offshore waters of Malta.

32. (1) The drilling of an exploration well from a non-production installation shall Public Participation
not be commenced unless the Competent Authority have previously ensured that early and effective public participation on the possible effects of planned offshore oil and gas operations on the environment pursuant to other European Union legal acts, in particular Directive 2001/42/EC or 2011/92/EU as appropriate, has been undertaken.

(2) Where public participation has not been undertaken pursuant to sub-article 1, the Competent Authority shall ensure that the following arrangements are made:

(a) the public is informed, whether by public notices or other appropriate means such as electronic media, where it is planned to allow exploration operations;

(b) the public concerned is identified, including the public affected or likely to be affected by, or having an interest in, the decision to allow exploration operations, including relevant non-governmental organisations such as those promoting environmental protection, and other relevant organisations;

(c) relevant information about such planned operations is made available to the public including, inter alia, information about the right to participate in decision-making, and to whom comments or questions may be submitted;

(d) the public is entitled to express comments and opinions at a time when all options are open before decisions to allow exploration are taken;

(e) when decisions under sub-article (d) are taken, due account is taken of the results of the public participation; and

(f) the Competent Authority in question promptly informs the public, after examining the comments and opinions expressed by them, about the decisions taken and the reasons therefor and considerations upon which those decisions are based, including information about the public participation process.

Reasonable time-frames shall be provided allowing sufficient time for each of the different stages of public participation.

(3) In this regard, the provisions of the Aarhus Convention shall be binding.

- 33.** (1) The Competent Authority shall ensure that it establishes mechanisms: Confidential Reporting of Safety Concerns
- (a) for confidential reporting of safety and environmental concerns relating to offshore oil and gas operations from any source; and
- (b) for investigation of such reports while maintaining the anonymity of the individuals concerned.
- (2) The Competent Authority shall require operators and owners to communicate details of the national arrangements for the mechanisms referred to in sub-article 1 to their employees and contractors connected with the operation and their employees, and to ensure that reference to confidential reporting is included in relevant training and notices.
- (3) For all purposes, the provisions of the Protection of the Whistleblower Act, Chapter 527 of the Laws of Malta, shall apply.
- 34.** The Competent Authority may request assistance from the European Maritime Security Agency (EMSA) in accordance with Article 10 of the Offshore Safety Directive and subsequent provisions to achieve the purposes set out in this Act. EMSA
- 35.** (1) The Competent Authority shall ensure that operators and owners provide the Competent Authority, as a minimum, with the information described in Annex IX. Sharing of Information
- (2) The Commission shall by means of an implementing act determine a common data reporting format and the details of information to be shared. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 37(2) of the Offshore Safety Directive.
- (3) The Minister shall designate an authority to be responsible for exchanging information pursuant to this Article and for publication of information.

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- 36.** (1) The Competent Authority shall make the information referred to in Annex IX publicly available. Transparency
- (2) The Commission shall by means of an implementing act determine a common publication format that enables easy cross-border comparison of data. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 37(2) of the Offshore Safety Directive.
- 37.** The Competent Authority may, at its discretion, stipulate mandatory safety drills in accordance with the provisions of Articles 19 and 20. The Operators shall be informed of such safety drills at least one month prior to the established date. Failure by the Operators to participate in such safety drills will result in legal action. Safety Drills and Additional Safety Measures
- 38.** This Act shall repeal the provisions of the Petroleum (Production) Act and the Petroleum Production Regulations. Any licenses, contracts or agreements to which the Government of Malta is a party which were concluded prior to the enactment of this Act shall continue to be construed in accordance with the provisions of the repealed legislation. Repeal of previous Legislation
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LIST OF ANNEXES

ANNEX I

Information to be included in documents submitted to the Competent Authority pursuant to Article 13B.

**1. INFORMATION TO BE SUBMITTED IN A DESIGN OR RELOCATION
NOTIFICATION FOR A PRODUCTION INSTALLATION**

The design notification and the relocation notification for a production installation to be submitted pursuant to sub-articles (c) and (j) of Article 13B(1) respectively shall contain at least the following information:

- (1) the name and address of the operator of the installation;
- (2) a description of the design process for the production operations and systems, from an initial concept to the submitted design or selection of an existing installation, the relevant standards used, and the design concepts included in the process;
- (3) a description of the selected design concept in relation to the major hazard scenarios for the particular installation and its location, and the primary risk control features;
- (4) a demonstration that the concept contributes to reducing major hazard risks to an acceptable level;
- (5) a description of the installation and the conditions at its intended location;
- (6) a description of any environmental, meteorological and seabed limitations on safe operations, and the arrangements for identifying risks from seabed and marine hazards such as pipelines and the moorings of adjacent installations;

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- (7) a description of the types of major hazard operations to be carried out;
 - (8) a general description of the safety and environmental management system by which the intended major accident risk control measures are to be maintained in good effect;
 - (9) a description of the independent verification schemes and an initial list of safety and environmental critical elements and their required performance;
 - (10) where an existing production installation is to be moved to a new location to serve a different production operation, a demonstration that the installation is suitable for the proposed production operation;
 - (11) where a non-production installation is to be converted for use as a production installation, a justification demonstrating that the installation is suitable for such conversion.

2. INFORMATION TO BE SUBMITTED IN A REPORT ON MAJOR HAZARDS FOR OPERATION OF A PRODUCTION INSTALLATION

Reports on major hazards for a production installation to be prepared in accordance with Article 15A and submitted pursuant to Article 13B(1)(e) shall contain at least the following information:

- (1) a description of the account taken of the Competent Authority's response to the design notification;
- (2) the name and address of the operator of the installation;
- (3) a summary of any worker involvement in the preparation of the report on major hazards;
- (4) a description of the installation and any association with other installations

or connected infrastructure, including wells;

(5) demonstration that all the major hazards have been identified, their likelihood and consequences assessed, including any environmental, meteorological and seabed limitations on safe operations, and that their control measures including associated safety and environmental critical elements are suitable so as to reduce the risk of a major accident to an acceptable level; this demonstration shall include an assessment of oil spill response effectiveness;

(6) a description of the types of operations with major hazard potential to be carried out, and the maximum number of persons that can be on the installation at any time;

(7) a description of equipment and arrangements to ensure well control, process safety, containment of hazardous substances, prevention of fire and explosion, protection of the workers from hazardous substances, and protection of the environment from an incipient major accident;

(8) a description of the arrangements to protect persons on the installation from major hazards, and to ensure their safe escape, evacuation and rescue, and arrangements for the maintenance of control systems to prevent damage to the installation and the environment in the event that all personnel are evacuated;

(9) relevant codes, standards and guidance used in the construction and commissioning of the installation;

(10) information, regarding the operator's safety and environmental management system, that is relevant to the production installation;

(11) an internal emergency response plan or an adequate description thereof;

(12) a description of the independent verification scheme;

(13) any other relevant details, for example where two or more installations operate in combination in a way which affects the major hazard potential of either or all installations;

(14) the information relevant to other requirements under this Act obtained pursuant to the major accident prevention requirements of Directive 92/91/EEC;

(15) in respect of operations to be conducted from the installation, any information relating to the prevention of major accidents resulting in significant or serious damage to the environment relevant to other requirements under this Act, obtained pursuant to Directive 2011/92/EU;

(16) an assessment of the identified potential environmental effects resulting from the loss of containment of pollutants arising from a major accident, and a description of the technical and non-technical measures envisaged to prevent, reduce or offset them, including monitoring.

3. INFORMATION TO BE SUBMITTED IN A REPORT ON MAJOR HAZARDS FOR A NON-PRODUCTION INSTALLATION

Reports on major hazards for a non-production installation to be prepared in accordance with Article 15B and submitted pursuant to Article 13B(1)(e) shall contain at least the following information:

(1) the name and address of the owner;

(2) a summary of any worker involvement in the preparation of the report on major hazards;

(3) a description of the installation and, in the case of a mobile installation, a description of its means of transfer between locations, and its stationing system;

(4) a description of the types of operations with major hazard potential that the installation is capable of performing, and the maximum number of persons that can be on the installation at any time;

(5) demonstration that all the major hazards have been identified, their likelihood and consequences assessed, including any environmental, meteorological and seabed limitations on safe operations and that their control measures including associated safety and environmental critical elements are suitable so as to reduce the risk of a major accident to an acceptable level; this demonstration shall include an assessment of any oil spill response effectiveness;

(6) a description of the plant and arrangements to ensure well control, process safety, containment of hazardous substances, prevention of fire and explosion, protection of the workers from hazardous substances, and protection of the environment from a major accident;

(7) a description of the arrangements to protect persons on the installation from major hazards, and to ensure their safe escape, evacuation and rescue, and arrangements for the maintenance of control systems to prevent damage to the installation and the environment in the event that all personnel are evacuated;

(8) relevant codes, standards and guidance used in the construction and commissioning of the installation;

(9) demonstration that all the major hazards have been identified for all operations the installation is capable of performing, and that the risk of a major accident is reduced to an acceptable level;

(10) a description of any environmental, meteorological and seabed limitations on safe operations, and the arrangements for identifying risks from seabed and marine hazards such as pipelines and the moorings of adjacent installations;

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- (11) information, regarding the safety and environmental management system, that is relevant to the non-production installation;
 - (12) an internal emergency response plan or an adequate description thereof;
 - (13) a description of the independent verification scheme;
 - (14) any other relevant details, for example where two or more installations operate in combination in a way which affects the major hazard potential of either or all installations;
 - (15) in respect of operations to be conducted from the installation, any information obtained pursuant to Directive 2011/92/EU relating to the prevention of major accidents resulting in significant or serious damage to the environment relevant to other requirements under this Act;
 - (16) an assessment of the identified potential environmental effects resulting from the loss of containment of pollutants arising from a major accident, and a description of the technical and non-technical measures envisaged to prevent, reduce or offset them, including monitoring.

4. INFORMATION TO BE SUBMITTED IN A NOTIFICATION OF WELL OPERATIONS

Notifications of well operations to be prepared in accordance with Article 29 and submitted pursuant to Article 13B(1)(h) shall contain at least the following information:

- (1) the name and address of the operator of the well;
- (2) the name of the installation to be used and the name and address of the owner or, in the case of a production installation, the contractor undertaking drilling activities;

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- (3) details that identify the well and any association with installations and connected infrastructure;
 - (4) information on the well work programme, including the period of its operation, details and verification of barriers against loss of well control (equipment, drilling fluids and cement etc.), directional control of the well path, and limitations on safe operations in keeping with the risk management;
 - (5) in the case of an existing well, information regarding its history and condition;
 - (6) any details concerning safety equipment to be deployed that are not described in the current report on major hazards for the installation;
 - (7) a risk assessment incorporating a description of:
 - (a) the particular hazards associated with the well operation including any environmental, meteorological and seabed limitations on safe operations;
 - (b) the subsurface hazards;
 - (c) any surface or subsea operations which introduce simultaneous major hazard potential;
 - (d) suitable control measures;
 - (8) a description of the well configuration at the end of operations – i.e. permanently or temporarily abandoned; and whether production equipment has been placed into the well for future use;
 - (9) in the case of a modification to a previously submitted notification of well operations, sufficient details to fully update the notification;
 - (10) where a well is to be constructed, modified or maintained by means of a non-production installation, additional information as follows:

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- (a) a description of any environmental, meteorological and seabed limitations on safe operations, and arrangements for identifying risks from seabed and marine hazards such as pipelines and the moorings of adjacent installations;
 - (b) a description of environmental conditions that have been taken into account within the internal emergency response plan for the installation;
 - (c) a description of emergency response arrangements including arrangements for responding in cases of environmental incidents that are not described in the report on major hazards; and
 - (d) a description of how the management systems of the operator of the well and the owner are to be coordinated to ensure effective control of major hazards at all times;
- (11) a report with findings of the independent well examination, including a statement by the operator of the well that, after considering the report and findings of independent well examination by the independent verifier, the risk management relating to well design and its barriers to loss of control are suitable for all anticipated conditions and circumstances;
- (12) the information relevant to this Act obtained pursuant to the major accident prevention requirements of Directive 92/91/EEC;
- (13) in respect of the well operations to be conducted, any information relevant to other requirements under this Act obtained pursuant to Directive 2011/92/EU relating to the prevention of major accidents resulting in significant or serious damage to the environment.

5. INFORMATION TO BE SUBMITTED RELATING TO A VERIFICATION SCHEME

Descriptions to be submitted pursuant to Article 13B(1)(d) in relation to schemes of independent verification to be established pursuant to Article 31(1)

shall include:

- (a) a statement by the operator or owner, made after considering the report of the independent verifier, that the record of safety critical elements and their scheme of maintenance as specified in the report on major hazards are or will be suitable;
- (b) a description of the verification scheme including the selection of independent verifiers, the means of verification that safety and environmental critical elements and any specified plant in the scheme remain in good repair and condition;
- (c) a description of the means of verification referred to in sub-article (b) that shall include details of the principles that will be applied to carry out the functions under the scheme and to keep the scheme under review throughout the lifecycle of the installation including:
 - (i) the examination and testing of the safety and environmental critical elements by independent and competent verifiers;
 - (ii) verification of the design, standard, certification or other system of conformity of the safety and environmental critical elements;
 - (iii) examination of work in progress;
 - (iv) the reporting of any instances of non-compliance;
 - (v) remedial actions taken by the operator or owner.

**6. INFORMATION TO BE PROVIDED IN RESPECT OF A MATERIAL
CHANGE TO AN INSTALLATION, INCLUDING REMOVAL OF A FIXED
INSTALLATION**

Where material changes are to be made to the installation as referred to in Article 15A(5) and Article 15B(4), the amended report on major hazards incorporating the material changes to be submitted pursuant to sub-article (f) of Article 13B(1) shall contain at least the following information:

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- (1) the name and address of the operator or the owner;
 - (2) a summary of any worker involvement in the preparation of the revised report on major hazards;
 - (3) sufficient details to fully update the earlier report on major hazards and associated internal emergency response plan for the installation and to demonstrate major hazard risks are reduced to an acceptable level;
 - (4) in the case of taking a fixed production installation out of use:
 - (a) means of isolating all hazardous substances and in the case of wells connected to the installation, the permanent sealing of the wells from the installation and the environment;
 - (b) a description of major hazard risks associated with the decommissioning of the installation to workers and the environment, the total exposed population, and the risk control measures;
 - (c) emergency response arrangements to secure safe evacuation and rescue of personnel and to maintain control systems for preventing a major accident to the environment.

**7. INFORMATION TO BE SUBMITTED IN A NOTIFICATION OF
COMBINED OPERATIONS**

The notification of combined operations to be prepared pursuant to Article 30 and submitted pursuant to Article 13B(1)(i) shall contain at least the following information:

- (1) the name and address of the operator submitting the notification;
- (2) in the event that other operators or owners are involved in the combined operations their names and addresses, including a confirmation that they agree with the contents of the notification;

(3) a description, in the form of a bridging document authorised by all parties to the document, of how the management systems for the installations involved in the combined operation will be coordinated so as to reduce the risk of a major accident to an acceptable level;

(4) a description of any equipment to be used in connection with the combined operation but which is not described in the current report on major hazards for any of the installations involved in the combined operations;

(5) a summary of the risk assessment carried out by all operators and owners involved in the combined operations, which shall include:

(a) a description of any operation during the combined operation which may involve hazards with the potential to cause a major accident on or in connection with an installation;

(b) a description of any risk control measures introduced as a result of the risk assessment;

(6) a description of the combined operation and a programme of work.

**8. INFORMATION TO BE SUBMITTED IN RESPECT OF A CORPORATE
MAJOR ACCIDENT PREVENTION POLICY**

The corporate major accident prevention policy to be prepared in accordance with Article 19(1) and submitted pursuant to Article 13B(1)(a) shall include but not be limited to:

(1) the responsibility at corporate board level for ensuring, on a continuous basis, that the corporate major accident prevention policy is suitable, implemented, and operating as intended;

(2) measures for building and maintaining a strong safety culture with a high likelihood of continuous safe operation;

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- (3) the extent and intensity of process auditing;
 - (4) measures for rewarding and recognising desired behaviours;
 - (5) the evaluation of the company's capabilities and goals;
 - (6) measures for maintenance of safety and environmental protection standards as a corporate core value;
 - (7) formal command and control systems that include board members and senior management of the company;
 - (8) the approach to competency at all levels of the company and the extent to which particulars (1)-(8) are applied in the company's offshore oil and gas operations conducted outside the European Union.

9. INFORMATION TO BE PROVIDED IN RESPECT OF A SAFETY AND ENVIRONMENTAL MANAGEMENT SYSTEM

The safety and environmental management system to be prepared pursuant to Article 19(3) and submitted pursuant to Article 13B(1)(b) shall include but not be limited to:

- (1) organisation structure and personnel roles and responsibilities;
- (2) identification and evaluation of major hazards as well as their likelihood and potential consequences;
- (3) integration of environmental impact into major accident risk assessments in the report on major hazards;
- (4) controls of the major hazards during normal operations;
- (5) management of change;

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- (6) emergency planning and response;
 - (7) limitation of damage to the environment;
 - (8) monitoring of performance;
 - (9) audit and review arrangements; and
 - (10) the measures in place for participating in tripartite consultations and how actions resulting from those consultations are put into effect.

**10. INFORMATION TO BE PROVIDED IN AN INTERNAL EMERGENCY
RESPONSE PLAN**

Internal emergency response plans to be prepared pursuant to Article 17 and submitted pursuant to Article 13B(1)(g) shall include but not be limited to:

- (1) names and positions of persons authorised to initiate emergency response procedures and the person directing the internal emergency response;
- (2) name or position of the person with responsibility for liaising with the authority or authorities responsible for the external emergency response plan;
- (3) a description of all foreseeable conditions or events which could cause a major accident, as described in the report on major hazards to which the plan is attached;
- (4) a description of the actions that will be taken to control conditions or events which could cause a major accident and to limit their consequences;
- (5) a description of the equipment and the resources available, including for capping any potential spill
- (6) arrangements for limiting the risks to persons on the installation and the

environment, including how warnings are to be given and the actions persons are expected to take on receipt of a warning;

(7) in the case of combined operation, arrangements for coordinating escape, evacuation and rescue between the installations concerned, to secure a good prospect of survival for persons on the installations during a major accident;

(8) an estimate of oil spill response effectiveness. Environmental conditions to be considered in this response analysis shall include:

(i) weather, including wind, visibility, precipitation and temperature;

(ii) states, tides, and currents;

(iii) presence of ice and debris;

(iv) hours of daylight; and

(v) other known environmental conditions that might influence the efficiency of the response equipment or the overall effectiveness of a response effort;

(9) arrangements for providing early warning of a major accident to the authority or authorities responsible for initiating the external emergency response plan, the type of information which shall be contained in an initial warning and the arrangements for the provision of more detailed information as it becomes available;

(10) arrangements for training personnel in the duties they will be expected to carry out, and where necessary coordinating this with external emergency responders;

(11) arrangements for coordinating internal emergency response with external emergency response;

(12) evidence of prior assessments of any chemicals used as dispersants that have been carried out to minimise public health implications and any further environmental damage.

ANNEX II

REPORTS OF WELL OPERATIONS TO BE SUBMITTED PURSUANT TO
ARTICLE 29(4).

The reports to be submitted to the Competent Authority pursuant to Article 29(4) shall contain at least the following information:

- (1) the name and address of the operator of the well;
 - (2) the name of the installation and the name and address of the operator or owner;
 - (3) details that identify the well and any association with installations or connected infrastructure;
 - (4) a summary of the operations undertaken since the commencement of operations or since the previous report;
 - (5) the diameter and true vertical and measured depths of:
 - (a) any hole drilled; and
 - (b) any casing installed;
 - (6) the drilling fluid density at the time of making the report; and
 - (7) in the case of operations relating to an existing well, its current operational state.
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ANNEX IIIPROVISIONS RELATING TO THE APPOINTMENT AND FUNCTIONING
OF THE COMPETENT AUTHORITY PURSUANT TO ARTICLE 12.**1. PROVISIONS RELATING TO THE COMPETENT AUTHORITY**

(1) For the purposes of appointing a Competent Authority responsible for the duties set out in Article 12, the Prime Minister shall as a minimum undertake the following:

(a) make organisational arrangements which allow for the duties assigned to the Competent Authority in this Act to be effectively discharged, including arrangements for regulating safety and environmental protection in an equitable manner;

(b) prepare a policy statement describing the aims of oversight and enforcement, and the obligations on the Competent Authority to achieve transparency, consistency, proportionality and objectivity in its regulation of offshore oil and gas operations.

(2) The Prime Minister shall make the necessary provisions to bring the arrangements in sub-article 1 into effect, including:

(a) funding sufficient specialist expertise available internally or by formal agreements with third parties or both in order that the Competent Authority may inspect and investigate operations, take enforcement action, and to handle reports on major hazards and notifications;

(b) where there is reliance on external sources of expertise, funding the preparation of sufficient written guidance and oversight to maintain consistency of approach and to ensure the legally appointed Competent Authority retains full responsibility under this Act;

(c) funding essential training, communication, access to technology, travel and subsistence of Competent Authority personnel for the carrying out of their

duties, and to facilitate the active cooperation between competent authorities pursuant to Article 27 of the Offshore Safety Directive;

(d) where appropriate, requiring operators or owners to reimburse the Competent Authority for the cost of carrying out its duties pursuant to this Act;

(e) funding and encouraging research pursuant to the Competent Authority's duties under this Act;

(f) providing funding for reports by the Competent Authority.

2. PROVISIONS RELATING TO THE FUNCTIONING OF THE COMPETENT AUTHORITY

(1) For the purposes of carrying out its duties pursuant to Article 12 effectively, the Competent Authority shall prepare:

(a) a written strategy that describes its duties, priorities for action i.e. in design and operation of installations, integrity management and in emergency preparedness and response, and how it is organised;

(b) operating procedures that describe how it will inspect and enforce the execution of the duties of operators and owners under this Act, including how it will handle, assess and accept reports on major hazards, handle notifications of well operations and how the intervals between inspection of major hazard risk control measures, including to the environment, for a given installation or activity are to be determined;

(c) procedures for carrying out its duties without prejudice to other responsibilities, for example onshore oil and gas operations, and arrangements pursuant to Directive 92/91/EEC;

(d) where the Competent Authority is comprised of more than one body, a formal agreement establishing the necessary mechanisms for joint operation of the Competent Authority, including senior management oversight and monitoring and reviews, joint planning and inspection, division of responsibilities for handling reports on major hazards, joint investigation,

internal communications, and reports to be published jointly externally.

(2) The detailed procedures for assessment of reports on major hazards shall require all factual information and other particulars required under this Directive to be provided by the operator or the owner. As a minimum the Competent Authority shall ensure that the requirements for the following information are clearly specified in guidance to operators and owners:

- (a) all foreseeable hazards with the potential to cause a major accident, including to the environment, have been identified, their risks evaluated and measures identified, including emergency responses, to control the risks;
- (b) the safety and environmental management system is adequately described to demonstrate compliance with this Act;
- (c) adequate arrangements have been described for independent verification, and for audit by the operator or owner.

(3) In undertaking a thorough assessment of reports on major hazards, the Competent Authority shall ensure that:

- (a) all factual information required is provided;
- (b) the operator or the owner has identified all reasonably foreseeable major accident hazards that apply to the installation and its functions, together with potential initiating events, and that the methodology and evaluation criteria adopted for major accident risk management are clearly explained, including factors for uncertainty in the analysis;
- (c) the risk management have taken into consideration all relevant stages in the lifecycle of the installation and have anticipated all foreseeable situations including:
 - (i) how the design decisions described in the design notification have taken account of risk management so as to ensure inherent safety and environmental principles are incorporated;

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- (ii) how well operations are to be conducted from the installation when operating;
 - (iii) how well operations are to be undertaken and temporarily suspended before production is commenced from a production installation;
 - (iv) how combined operations are to be undertaken with other installation;
 - (v) how the decommissioning of the installation will be undertaken;
 - (d) how risk reduction measures identified as part of the risk management are intended to be implemented if necessary to reduce risks to an acceptable level;
 - (e) whether, in determining the necessary measures to achieve acceptable levels of risk, the operator or owner has clearly demonstrated how relevant good practice and judgment based on sound engineering, best management practice, and human and organisational factors principles have been taken into account;
 - (f) whether the measures and arrangements for the detection of, and the rapid and effective response to, an emergency are clearly identified and justified;
 - (g) how escape, evacuation and rescue arrangements and measures to limit escalation of an emergency and reduce its impact on the environment are integrated in a logical and systematic manner, taking account of the likely emergency conditions in which they will be operated;
 - (h) how the requirements are incorporated in the internal emergency response plans and whether a copy or an adequate description of the internal emergency response plan has been submitted to the Competent Authority;
 - (i) whether the safety and environmental management system described in the report on major hazards is adequate to ensure control of the major hazard risks at each stage of the installation lifecycle, and ensures compliance with all relevant legal provisions, and provides for auditing and implementing audit recommendations;
 - (j) whether the scheme for independent verification is clearly explained.
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ANNEX IV

PROVISIONS BY OPERATORS AND OWNERS FOR PREVENTION OF
MAJOR ACCIDENTS PURSUANT TO ARTICLE 18

The Competent Authority shall ensure that operators and owners:

- (a) pay particular attention to evaluation of the reliability and integrity requirements of all safety and environmental critical systems and base their inspection and maintenance systems on achieving the required level of safety and environmental integrity;
- (b) take appropriate measures to ensure as far as reasonably practicable that there is no unplanned escape of hazardous substances from pipelines, vessels and systems intended for their safe confinement. In addition, operators and owners shall ensure that no single failure of a containment barrier can lead to a major accident;
- (c) prepare an inventory of available equipment, its ownership, location, transport to and mode of deployment at the installation and any entities relevant to the implementation of the internal emergency response plan. The inventory shall identify measures in place to ensure equipment and procedures are maintained in operable condition;
- (d) ensure they have a suitable framework for monitoring compliance with all relevant statutory provisions by incorporating their statutory duties in respect of major hazards control and environmental protection into their standard operating procedures; and
- (e) pay particular attention to building and maintaining a strong safety culture with a high likelihood of continuous safe operation, including with regard to securing cooperation of the workers through, inter alia:
 - (i) visible commitment to tripartite consultations and actions arising therefrom;
 - (ii) encouraging and rewarding reporting of accidents and near-misses;

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- (iii) working effectively with elected safety representatives;
 - (iv) protecting whistleblowers.

The Competent Authority shall ensure that industry cooperates with competent authorities to establish and implement a priority plan for the development of standards, guidance and rules which will give effect to best practice in major accident prevention, and limitation of consequences of major accidents should they nonetheless occur.

ANNEX V

1. SELECTION OF THE INDEPENDENT VERIFIER AND THE DESIGN OF SCHEMES FOR INDEPENDENT VERIFICATION PURSUANT TO ARTICLE 31(3)

The Competent Authority shall require the operator or owner to ensure the following conditions are fulfilled with regard to the verifier's independence from the operator and the owner:

- (a) the function does not require the independent verifier to consider any aspect of a safety and environmental critical element or any part of an installation or a well or a well design in which the verifier was previously involved prior to the verification activity or where his or her objectivity might be compromised;
- (b) the independent verifier is sufficiently independent of a management system which has, or has had, any responsibility for any aspect of a component covered by the scheme for independent verification or well examination so as to ensure objectivity in carrying out his or her functions under the scheme.

2. The Competent Authority shall require the operator or the owner to ensure that, in respect of the scheme for independent verification relating to an installation or a well, the following conditions are fulfilled:

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- (a) the independent verifier has suitable technical competence, including where necessary, suitably qualified and experienced personnel in adequate numbers who fulfil the requirements of sub-article 1 of this Annex;
 - (b) tasks under the scheme for independent verification are appropriately allocated by the independent verifier to personnel qualified to undertake them;
 - (c) suitable arrangements are in place for the flow of information between the operator or owner and the independent verifier;
 - (d) the independent verifier is given suitable authority to be able to carry out the functions effectively.
3. Material changes shall be referred to the independent verifier for further verification in accordance with the scheme for independent verification, and the outcomes of such further verification shall be communicated to the Competent Authority, if requested.

ANNEX VI

INFORMATION RELATING TO PRIORITIES FOR COOPERATION BETWEEN OPERATORS AND OWNERS AND COMPETENT AUTHORITIES PURSUANT TO ARTICLE 18(7)

The matters to be considered for establishing priorities for the development of standards and guidance shall give practical effect to major accident prevention and limitation of their consequences. The matters shall include:

- (a) improving well integrity, well control equipment and barriers and monitoring their effectiveness;
- (b) improving primary containment;
- (c) improving secondary containment that restricts escalation of an incipient major accident, including well blow-outs;

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- (d) reliable decision making;
 - (e) management and supervision of major hazard operations;
 - (f) competency of key post holders;
 - (g) effective risk management;
 - (h) reliability assessment for safety and environmental critical systems;
 - (i) key performance indicators;
 - (j) effectively integrating safety and environmental management systems between operators and owners and other entities involved in oil and gas operations.

ANNEX VII

INFORMATION TO BE PROVIDED IN EXTERNAL EMERGENCY RESPONSE PLANS PURSUANT TO ARTICLE 20

External emergency response plans prepared pursuant to Article 20 shall include but not be limited to:

- (a) names and positions of persons authorised to initiate emergency procedures, and of persons authorised to direct the external emergency response;
- (b) arrangements for receiving early warning of major accidents, and the associated alert and emergency response procedures;
- (c) arrangements for coordinating resources necessary to implement the external emergency response plan;
- (d) arrangements for providing assistance to the internal emergency response;
- (e) a detailed description of the external emergency response arrangements;
- (f) arrangements for providing persons and organisations that may be affected by the major accident with suitable information and advice relating to it;
- (g) arrangements for the provision of information to the emergency services of other Member States and the Commission in the event of a major accident with

possible transboundary consequences;

(h) arrangements for the mitigation of the negative impacts on wildlife both onshore and offshore including the situations where oiled animals reach shore earlier than the actual spill.

ANNEX VIII

PARTICULARS TO BE INCLUDED IN THE PREPARATION OF EXTERNAL EMERGENCY RESPONSE PLANS PURSUANT TO ARTICLE

20

1. The authority or authorities responsible for coordinating emergency response shall make the following available:
 - (a) an inventory of available equipment, its ownership, location, means of transport to and mode of deployment at the site of the major accident;
 - (b) a description of the measures in place to ensure equipment and procedures are maintained in operable condition;
 - (c) an inventory of industry-owned equipment that can be made available in an emergency;
 - (d) a description of the general arrangements for responding to major accidents, including competencies and responsibilities of all involved parties and the bodies responsible for maintaining such arrangements;
 - (e) measures to ensure that equipment, personnel and procedures are available and up to date and sufficient members of trained personnel are available at all times;
 - (f) evidence of prior environment and health assessments of any chemicals foreseen for use as dispersants.

2. External emergency response plans shall clearly explain the role of the authorities, emergency responders, coordinators and other subjects active in

emergency response, so that cooperation is ensured in responding to major accidents.

3. Arrangements shall include provisions for responding to a major accident that potentially overwhelms the Member State or exceeds its boundaries by:
 - (a) sharing external emergency response plans with adjacent Member States and the Commission;
 - (b) compiling at cross-border level the inventories of response assets, both industry and publicly owned and all necessary adaptations to make equipment and procedures compatible between adjacent countries and Member States;
 - (c) procedures for invoking the Union Civil Protection Mechanism;
 - (d) arranging transboundary exercises of external emergency response.

ANNEX IX

SHARING OF INFORMATION AND TRANSPARENCY

1. The common data reporting format for major hazard indicators shall make it possible to compare information from competent authorities and to compare information from individual operators and owners.
2. The information to be shared by the Competent Authority and operators and owners shall include information relating to:
 - (a) unintended release of oil, gas or other hazardous substances, whether or not ignited;
 - (b) loss of well control requiring actuation of well control equipment, or failure of a well barrier requiring its replacement or repair;
 - (c) failure of a safety and environmental critical element;
 - (d) significant loss of structural integrity, or loss of protection against the

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- effects of fire or explosion, or loss of station keeping in relation to a mobile installation;
- (e) vessels on collision course and actual vessel collisions with an offshore installation;
 - (f) helicopter accidents, on or near offshore installations;
 - (g) any fatal accident;
 - (h) any serious injuries to 5 or more persons in the same accident;
 - (i) any evacuation of personnel;
 - (j) a major environmental incident.
- 3.** The annual reports to be submitted by the Competent Authority pursuant to Article 36 shall contain as a minimum the following information:
- (a) the number, age and location of installations;
 - (b) the number and type of inspections and investigations carried out, any enforcement actions or convictions;
 - (c) incident data pursuant to the common reporting system required in Article 31;
 - (d) any major change in the offshore regulatory framework;
 - (e) the performance of offshore oil and gas operations in relation to prevention of major accidents and the limiting of consequences of major accidents that do occur.
- 4.** The information referred to in sub-article 2 shall consist of both factual information and analytical data regarding oil and gas operations, and shall be unambiguous. The information and data provided shall be such that the performance of individual operators and owners can be compared within Malta and the performance of the industry as a whole can be compared between Member States.

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5. The information collected and assembled referred to in sub-article 2 shall enable Member States to provide advanced warning of potential deterioration of safety and environmentally critical barriers, and shall enable them to take preventive action. The information shall also demonstrate the overall effectiveness of measures and controls implemented by individual operators and owners, and industry as a whole, in particular to prevent major accidents and to minimise risks for the environment.
 6. In order to meet the requirements of Article 36, a simplified format shall be developed to facilitate publication of relevant data pursuant to sub-article 2 of this Annex and preparation of reports pursuant to Article 25 of the Offshore Safety Directive in a way that is easily accessible to the public and facilitates transboundary comparison of data.

ANNEX X

HARMFUL OR NOXIOUS SUBSTANCES AND MATERIALS THE DISPOSAL OF WHICH IS PROHIBITED

1. The following substances and materials and compounds thereof are listed for the purposes of Article 23(4), of this Act. They have been selected mainly on the basis of their toxicity, persistence and bioaccumulation:
 - (a) Mercury and mercury compounds;
 - (b) Cadmium and cadmium compounds;
 - (c) Organotin compounds and substances which may form such compounds in the marine environment;
 - (d) Organophosphorus compounds and substances which may form such compounds in the marine environment;
 - (e) Organohalogen compounds and substances which may form such compounds in the marine environment;

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- (f) Crude oil, fuel oil, oily sludge, used lubricating oils and refined products
 - (g) Persistent synthetic materials which may float, sink or remain in suspension and which may interfere with any legitimate use of the sea;
 - (h) Substances having proven carcinogenic, teratogenic or mutagenic properties in or through the marine environment;
 - (i) Radioactive substances, including their wastes, if their discharges do not comply with the principles of radiation protection as defined by the competent international organizations, taking into account the protection of the marine environment;
2. The present Annex does not apply to discharges which contain substances listed in section A that are below the limits defined jointly by the Parties and, in relation to oil, below the limits defined in Article 24 of this Act.

ANNEX XI

HARMFUL OR NOXIOUS SUBSTANCES AND MATERIALS THE
DISPOSAL OF WHICH IS SUBJECT TO A SPECIAL PERMIT

1. The following substances and materials and compounds thereof have been selected for the purpose of Article 23(5) of the Act.
- (a) Arsenic
 - (b) Lead
 - (c) Copper
 - (d) Zinc
 - (e) Beryllium
 - (f) Nickel
 - (g) Vanadium
 - (h) Chromium

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- (i) Biocides and their derivatives not covered in Annex X
 - (j) Selenium
 - (k) Antimony
 - (l) Molybdenum
 - (m) Titanium
 - (n) Tin
 - (o) Barium (other than barium sulphate)
 - (p) Boron
 - (q) Uranium
 - (r) Cobalt
 - (s) Thallium
 - (t) Tellurium
 - (u) Silver
 - (v) Cyanides
2. The control and strict limitation of the discharge of substances referred to in Article 1 of this Annex must be implemented in accordance with Annex XII.

ANNEX XII

FACTORS TO BE CONSIDERED FOR THE ISSUE OF THE PERMITS

1. For the purpose of the issue of a permit required under Article 23(7), particular account will be taken, as the case may be, of the following factors:

Characteristics and composition of the waste:

- (a) Type and size of waste source (e.g. industrial process);
- (b) Type of waste (origin, average composition);
- (c) Form of waste (solid, liquid, sludge, slurry, gaseous);
- (d) Total amount (volume discharged, e.g. per year);

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- (e) Discharge pattern (continuous, intermittent, seasonally variable, etc.);
 - (f) Concentrations with respect to major constituents, substances listed in Annex X, substances listed in Annex XI, and other substances as appropriate;
 - (g) Physical, chemical and biochemical properties of the waste.
2. Characteristics of waste constituents with respect to their harmfulness:
- (a) Persistence (physical, chemical, biological) in the marine environment;
 - (b) Toxicity and other harmful effects;
 - (c) Accumulation in biological materials or sediments;
 - (d) Biochemical transformation producing harmful compounds;
 - (e) Adverse effects on the oxygen content and balance;
 - (f) Susceptibility to physical, chemical and biochemical changes and interaction in the aquatic environment with other sea-water constituents which may produce harmful biological or other effects on any of the uses listed in Section E below.
3. Characteristics of discharge site and receiving marine environment:
- (a) Hydrographic, meteorological, geological and topographical characteristics of the area;
 - (b) Location and type of the discharge (outfall, canal, outlet, etc.) and its relation to other areas (such as amenity areas, spawning, nursery and fishing areas, shellfish grounds) and other discharges;
 - (c) Initial dilution achieved at the point of discharge into the receiving marine environment;
 - (d) Dispersion characteristics such as effects of currents, tides and wind on horizontal transport and vertical mixing;
 - (e) Receiving water characteristics with respect to physical, chemical, biological and ecological conditions in the discharge area;
 - (f) Capacity of the receiving marine environment to receive waste discharges

without undesirable effects.

4. Availability of waste technologies

The methods of waste reduction and discharge for industrial effluents as well as domestic sewage should be selected taking into account the availability and feasibility of:

- (a) Alternative treatment processes;
- (b) Reuse or elimination methods;
- (c) On-land disposal alternatives;
- (d) Appropriate low-waste technologies.

5. Potential impairment of marine ecosystem and sea-water uses:

(1) Effects on human life through pollution impact on:

- (a) Edible marine organisms;
- (b) Bathing waters;
- (c) Aesthetics.

(2) Effects on marine ecosystems, in particular living resources, endangered species and critical habitats.

(3) Effects on other legitimate uses of the sea in conformity with international law.

ANNEX XIII

OIL AND OILY MIXTURES AND DRILLING FLUIDS AND CUTTINGS

The following provisions shall be prescribed by the Parties in accordance with

Article 24:

1. Oil and Oily Mixtures

(a) Spills of high oil content in processing drainage and platform drainage shall be contained, diverted and then treated as part of the product, but the remainder shall be treated to an acceptable level before discharge, in accordance with good oilfield practice;

(b) Oily waste and sludges from separation processes shall be transported to shore;

(c) All the necessary precautions shall be taken to minimize losses of oil into the sea from oil collected or flared from well testing;

(d) All the necessary precautions shall be taken to ensure that any gas resulting from oil activities should be flared or used in an appropriate manner.

2. Drilling Fluids and Drill Cuttings

(a) Water-based drilling fluids and drill cuttings shall be subject to the following requirements:

(b) The use and disposal of such drilling fluids shall be subject to the Chemical Use Plan and the provisions of Article 23 of this Act;

(c) The disposal of the drill cuttings shall either be made on land or into the sea in an appropriate site or area as specified by the competent authority.

3. Oil-based drilling fluids and drill cuttings are subject to the following requirements:

(a) Such fluids shall only be used if they are of a sufficiently low toxicity and only after the operator has been issued a permit by the competent authority when it has verified such low toxicity;

(b) The disposal into the sea of such drilling fluids is prohibited;

(c) The disposal of the drill cuttings into the sea is only permitted on condition

that efficient solids control equipment is installed and properly operated, that the discharge point is well below the surface of the water, and that the oil content is less than 100 grams of oil per kilogram dry cuttings;

(d) The disposal of such drill cuttings in specially protected areas is prohibited;

(e) In case of production and development drilling, a programme of seabed sampling and analysis relating to the zone of contamination must be undertaken.

4. Diesel-based drilling fluids:

The use of diesel-based drilling fluids is prohibited. Diesel oil may exceptionally be added to drilling fluids in such circumstances as the Competent Authority may specify.

SCHEDULE A

In accordance with the provisions of Article 7 (1):

Form of Application for a Production Licence or an Exploration Licence

1. Name of applicant in full.

2. (a) Place of registration or incorporation.

(b) Principal place of business.

(c) Place of central management and control.

(d) Particulars of the members of the board of directors or other governing body of the corporate body, as follows:

(1) Full names

(2) Usual residential address

(3) Nationalities

3. (a) Particulars of capital authorised and issued, as follows:

(1) Class of Capital

(2) Amount Authorised

(3) Amount issued

(4) Amount paid up

(5) Voting rights of each class

(b) The annual reports and balance sheets, if any, for the three years immediately preceding the application accompanying the application.

(c) Particulars of all holdings of not less than 5 *per centum* in number or value of any class of capital which has been issued by the corporate body as follows:

(1) Name of holder or names or joint holders, in full

(2) Class of holding

(3) Amount

(4) Nationality of holder(s)

(d) Particulars of all capital issued to bearer, as follows:

(1) Class of capital

(2) Total amount issued

(3) Amount issued to bearer

4. Particulars of previous experience in exploration and/or production of petroleum and availability of specialised personnel and equipment.

5. If the application is for an exploration licence:

(a) Description of the area in respect of which the application is submitted, such an area being also shown on a map accompanying the application.

(b) Description of the exploration intended to be carried out, including an indication of the methods to be used and information as to any sea or air craft intended to be utilised.

6. Type of licence applied for, and if a production licence, reference number(s) or letter(s) of the block(s) or area(s) in respect of which the application is made.

I hereby declare that the information given above or annexed to this application is correct.

Date

Signature of a duly authorised
officer of the body corporate
whose capacity is to be stated.

Bibliography

Articles

Boxer, Baruch; 'Mediterranean Oil Pollution Monitoring and Control: Technical and Policy Issues', *International Oil Spill Conference Proceedings 1979*: No. 1, p. 283.

Frank, Veronica; *The European Community and Marine Environmental Protection in the International Law of the Sea*, 1st edition, Martinus Nijhoff Publishers, 2007.

Gao, Zhiguo; 'Environmental Regulation of the Oil and Gas Industry' (1997) University of Dundee, Discussion Paper 16.

Rios, Nathalie; 'Environmental Protection of the Mediterranean Sea', *Revista de Estudios Juridicos* 11/2011.

Books

Attard, David; *The Exclusive Economic Zone in International Law*, Oxford University Press, Oxford, 1987.

Roggenkamp, M et al (eds); *Energy Law in Europe: National, EU and International Regulation*, 2nd edition, Oxford University Press, 2007.

Scovazzi, Tullio; 'Maritime Accidents with Particular Emphasis on Liability and Compensation for Damage from the Exploitation of Mineral Resources of the Seabed' in Andrea de Guttry, Marco Gestri, Gabriella Venturini (eds), *International Disaster Response Law*, 1st edition, Springer, 2012.

Online Sources

Christou, Michail and Konstantinidou, Argyri Myrto; 'Safety of Offshore Oil and Gas Operations: Lessons from past Accident Analysis', JRC Scientific and Policy Reports 2012 <<http://publications.jrc.ec.europa.eu/repository/bitstream/111111111/27463/1/offshore-accident-analysis-draft-final-report-dec-2012-rev6-online.pdf>> accessed 29th April 2015.

Freight Transport Statistics, EUROSTAT Yearbook, EUROSTAT <http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Mediterranean_and_Black_Sea_coastal_region_statistics> accessed 28th March 2015.

Gavouneli, Maria; 'Offshore Installations: A Comprehensive Regime?', MAPILEAN e-Bulletin, 4th April 2013, <<http://www.mepielan-ebulletin.gr/default.aspx?pid=18&CategoryId=4&ArticleId=137&Article=Offshore-Installations:-A-Comprehensive-Regime?>> accessed 21st March 2015.

International EMECS Centre,
<<http://www.emecs.or.jp/guidebook/eng/pdf/04mediterranean.pdf>>, accessed 28th March 2015.

MEDEXPOL, REMPEC/WG.34/19 <
http://www.rempec.org/admin/store/wyswigImg/file/News/Forthcoming%20Meetings/MEDEXPOL2013/E-%20Working%20Docs/WG_34_19%20-%20Study%20on%20the%20International%20Best%20Practices-.pdf> accessed 5th April 2015.

Milieu Ltd, Safety of Offshore Exploration and Exploitation Activities in the Mediterranean: Creating Synergies between the forthcoming EU Regulation and the Protocol to the Barcelona Convention, 2013, <<http://ec.europa.eu/environment/marine/international-cooperation/regional-sea-conventions/barcelona-convention/pdf/Final%20Report%20Offshore%20Safety%20Barcelona%20Protocol%20.pdf>> accessed 20th April 2015.

'The Mediterranean Sea', International EMECS Centre,
<<http://www.emecs.or.jp/guidebook/eng/pdf/04mediterranean.pdf>>, accessed 28th March 2015.

UNEP Press Release, 'EU Accession to the Offshore Protocol'
<<http://www.ypeka.gr/LinkClick.aspx?fileticket=U9arEHp%2BJQQ%3D&tabid=550&language=el-GR>> accessed 18th February 2015.

UNEP, Report of the First Offshore Protocol Working Group Meeting, Malta, 2013
<<http://www.rempec.org/admin/store/wyswigImg/file/News/EConsolidated%20Report.pdf>> accessed 16th April 2015.

Reports

European Commission - DG Energy, Civil Liability, Financial Security and Compensation Claims for Offshore Oil and Gas Activities in the European Economic Area, Final Report, 14th August 2014.

National Audit Office (NAO), 'Malta's Level of Preparedness to Deal with Oil Pollution at Sea', July 2014.

UNEP, *MEDWAVES*, Winter 1994-1995.